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) Supreme Court No. _____

) COURT REPORTER'S TRANSCRIPT

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A P P E A R A N C E S

WAYNE KIDWELL, Esq. Attorney General of the State of Idaho, Capitol Building, Boise, Idaho, for and on behalf of the plaintiff-respondent.

BRUCE O. ROBINSON, Esq., Post Office Box 8, Nampa, Idaho, appearing for and on behalf of the defendant-appellant.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE

THE STATE OF IDAHO,

Plaintiff,

VS

THOMAS EUGENE CREECH,

De fendant .

Cr. No. 2165

REPORTER'S TRANSCRIPT

BEFORE

HONORABLE J. RAY DURTSCH

DISTRICT JUDGE

BE IT REMEMBERED, That the above-entitled matter came on for hearing and trial before the Honorable J. Ray Durtschi, District Judge, with a jury, at Cascade, Idaho, May 20, 1975 through May 22, 1975, and at Wallace, Idaho, October 6, 1975 through October 22, 1975.

A P P E A R A N C E S

ROBERT REMAKLUS, Esq., Prosecuting Attorney, Cascade, Idaho, and
LYNN THOMAS, Esq., Deputy Attorney General, Statehouse, Boise,
Idaho, appearing for and on behalf of the plaintiff.

BRUCE O. ROBINSON, Esq., Post Office Box 8, Nampa, Idaho,
appearing for and on behalf of the defendant, and

WARD HOWER, Esq., Post Office Box 799, Cascade, Idaho,
appearing for and on behalf of the defendant.

A P P E A R A N C E S

ROBERT REMAKLUS, Esq., Prosecuting Attorney, Cascade, Idaho, and

LYNN THOMAS, Esq., Deputy Attorney General, Statehouse, Boise,
Idaho, appearing for and on behalf of the plaintiff.

BRUCE O. ROBINSON, Esq., Post Office Box 8, Nampa, Idaho,
appearing for and on behalf of the defendant, and

WARD HOWER, Esq., Post Office Box 799, Cascade, Idaho,
appearing for and on behalf of the defendant.

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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE

THE STATE OF IDAHO,)	Cr. No. 2165
)	
Plaintiff-Respondent,)	
)	LODGMET OF COURT
vs)	REPORTER'S TRANSCRIPT
)	ON APPEAL
THOMAS EUGENE CREBCH,)	
)	
Defendant-Appellant.)	

RECEIVED from John W. Gambee, Official Court Reporter
of the above-entitled court, and lodged with me this ____ day
of _____, 1976, original plus _____ copies of
the Court Reporter's Transcript on Appeal.

CLERK OF THE DISTRICT COURT

Deputy

1 WALLACE, IDAHO, THURSDAY, OCTOBER 9, 1975, 10:00 A.M.

2
3
4 THE COURT: I assume we don't have any members of the
5 jury panel here in the court at this time, is that right?
6 There are -- I've advised Counsel in chambers of a matter that's
7 come up. I want to advise them for the record at this time,
8 the first alternate juror we have, Mr. Ronald Gribble, came to
9 me this morning and advised me that after he got home last
10 night and was thinking about the case and the questions we
11 asked him, he recalled that he had read considerable amounts,
12 or heard a considerable amount, about a case from Southern Idaho
13 but he didn't tie what he had read, in with Mr. Creech's name,
14 or with this particular case and he didn't really make the
15 connection until he got home.

16 I would propose that, perhaps, we have Mr. Gribble
17 examined out of the presence of the other members of the panel
18 on this subject and let Counsel ask him any questions they want
19 to if Counsel would like to do that.

20 MR. REMAKLUS: That would be agreeable, Your Honor.

21 MR. ROBINSON: That is agreeable with defense, Your Honor.

22 THE COURT: Mr. Bailiff, if you'd get Mr. Gribble, then,
23 please.

24 (Whereupon the prospective juror, Mr. Gribble,
25 entered the courtroom.)

1 THE COURT: Mr. Gribble, if you'd go around and take the
2 witness seat, please.

3 The record may show that Mr. Gribble is in the
4 witness chair.

5
6 RONALD F. GRIBBLE,
7 an alternate juror herein, having been previously duly sworn,
8 took the stand and testified further as follows:

9
10 FURTHER VOIR DIRE EXAMINATION

11 BY THE COURT:

12 Q Mr. Gribble, I've advised Counsel here for the
13 record, basically, what you told me when you came in this
14 morning, that, essentially, that you, at the time you were
15 questioned yesterday, just didn't make the connection between
16 the name "Creech" or Mr. Creech's name and some material you had
17 read and heard about a case in -- murder case in Southern Idaho
18 and that, after you got home last night you did make the
19 connection and realized that what you had read about the case
20 in Southern Idaho was the same case. Is that essentially what
21 you told me?

22 A Yes, sir.

23 Q All right. I would first express appreciation to
24 you, Mr. Gribble, for bringing that to our attention. I think
25 it shows your basic integrity and I think it's very commendable

1 for you to do this; realizing that, probably, it would cause
2 some embarrassment for you and make problems for us.

3 Let me just ask you the basic question that we're
4 concerned with about this. I recall, I think it was you that
5 said, unless I'm thinking of the wrong juror, that you didn't
6 always believe what you read in the papers anyway?

7 A. That's true.

8 Q. That's true?

9 A. That's true.

10 Q. Bearing that in mind, I'm wondering if it would be
11 possible for you to set aside the things you have heard about
12 the case now that you've made the connection, and decide this
13 case, if you are seated as a regular juror, understanding that
14 wouldn't happen unless one of the regular jurors get ill or
15 for some reason can't serve, but if you are seated, if you can
16 set this information aside and decide this case solely on the
17 evidence that is admitted here in open court and the law as
18 stated by me?

19 A. I didn't read any newspapers.

20 Q. Excuse me.

21 A. It was from the people that we picked up from
22 Southern Idaho. We have a couple crew bosses that are coaches
23 in Southern Idaho; come up here for fire crews and things like
24 that.

25 Q. Thank you. You talked about the case?

1 A. Yeah, and some of the people in the office picked it
2 up from them. I heard it from them and --

3 Q. Oh, I understand, then, it's even more understandable
4 why you wouldn't connect the case, then, if it came to you in
5 that manner.

6 A. I haven't looked at anything since I got my
7 summons because I thought, when I saw it first and said there
8 was going to be a trial, I didn't even bother to look at names
9 or anything. I just read the sports page for three days.

10 Q. Well, we appreciate that correction for the record.

11 Get back to that basic question. Do you feel you
12 could set this information aside and decide the case, understanding
13 that this case involves just a specific charge and that's all
14 we're concerned with here, and whether you could decide guilt
15 or innocence on this specific charge that we're trying here in
16 court at this time; based on the evidence and the law without
17 being influenced by these other things you've heard?

18 A. I would say I'd do the best I can but I wanted the
19 defense to know it and Prosecutor, anyway.

20 THE COURT: Well, we appreciate it, Mr. Gribble. I'll
21 give Counsel a chance to examine if you want.

22 MR. REMAKLUS: I believe, Mr. Gribble, a man of your
23 character could do that and for that reason we're certainly --
24 I believe you would make your best effort and could achieve
25 that frame of mind and, therefore, we'll pass this juror for

1 cause, Your Honor.

2 THE COURT: Mr. Robinson?

3 MR. ROBINSON: If I may.

4 THE COURT: Yes.

5

6

FURTHER VOIR DIRE EXAMINATION

7

BY MR. ROBINSON:

8 Q Mr. Gribble, was this an extensive amount of
9 conversation and discussion with the parties from South Idaho
10 that you had?

11 A No, sir, not really. It's just information you
12 pick up when you are working with people and somebody talks
13 about something that happened back home and things like that.
14 They talked about it a few times at coffee break in the office.

15 Q To some detail?

16 A Yes, a little bit of detail.

17 Q Out-of-state involvements?

18 A Yes, sir.

19 Q And from this information and your having examined
20 -- made the connection last night and examined your own mind,
21 I notice you had some hesitation when His Honor asked you whether
22 or not you could set it aside and, basically, judge this case
23 on the facts of the specific charges here?

24 A That's probably the toughest question I've ever
25 been asked in my life.

1 Q Um-hmm. I can appreciate the depth as to which you
2 have examined your mind to, Mr. Gribble. Because of that
3 information having been imparted to you, do you now feel that
4 the defense and Mr. Creech in particular would have to come
5 forth with some evidence to prove his innocence?

6 A I would have to say to a point, yes, sir, I think a
7 guy would be lying if he said no.

8 Q All right.

9 A I'd say it would be pretty tough, but a guy would
10 have to look at it pretty careful.

11 Q Now, so I can precisely evaluate what course of
12 action I need to take, Mr. Gribble, I understand that in your
13 background you have been a law enforcement officer?

14 A No, sir. I was -- oh, a kind of a guard in the
15 Service once in awhile, you know, moving prisoners from one
16 place to another and --

17 Q Um-hmm.

18 A -- but I had two years of military duty.

19 Q And when and where was this?

20 A Let's see, November of 1965 to October, 1967;
21 about eight months in the United States and the rest overseas
22 in Europe. Some of the countries over there, Germany, France.

23 Q Um-hmm.

24 A And, after that I came out and jobs were tough, I
25 went to work in the mines for awhile and I went back to work for

1 the Forest Service and there were no openings, so, I knocked
2 around doing a little logging. I used to pull trucks up here
3 on the pass when the road was pretty bad and about three and a
4 half years ago I got an appointment for the Government.

5 Q I see. Well, Mr. Gribble, basically what you have
6 advised us of, after making the connection, this might also
7 affect the manner and way you would answer the Court's question
8 and interrogation of you yesterday in regards to the presumption
9 of innocence until proven guilty beyond a reasonable doubt, also,
10 wouldn't it?

11 A I would have to say yes, sir.

12 MR. ROBINSON: Your Honor, reluctantly we do, in the
13 defense, we do make a challenge for cause.

14 THE COURT: Resist the challenge?

15 MR. THOMAS: No, Your Honor.

16 THE COURT: Well, I suppose this is just redundant,
17 Mr. Gribble, but I do want to make it absolutely clear for the
18 record, I know there's a difference between what the law is and
19 perhaps what you -- what is humanly possible to do within our
20 human limitations and I appreciate that you are sharp enough
21 to draw that distinction.

22 I'm sure you do understand from my questioning
23 yesterday that what the meaning of this presumption of innocence
24 is that the defendant isn't required, according to our law, to
25 come forth with any evidence of his innocence, doesn't have to

1 have any burden to prove his innocence. You understand that
2 principle of law, don't you?

3 THE WITNESS: Yes, sir. Well, that's why I came back
4 last night because I would hope somebody would do that for me
5 if I was in his place.

6 THE COURT: Okay, I just wanted to make sure you
7 understood the principle of law, I wasn't sure you did.

8 Then, we move to what has been the human
9 capability which I guess none of us know the full limitations,
10 but you expressed initially that you would try yourself to give
11 him the benefit of that presumption and try the case on the
12 evidence. But, you, examining your conscience, feel, as
13 expressed to Mr. Robinson, you just aren't sure you could do
14 that, is that what it amounts to?

15 THE WITNESS: I think there's too much at stake here to
16 make a mistake on it. If I did it right, then it would be fine,
17 but if I made a mistake and I was called to be a regular juror,
18 that would be a mistake that would be pretty hard to live with.

19 THE COURT: Well, you feel that you can't assure us that
20 you would be able to do this; to set this out of your mind and
21 try it on the evidence, then?

22 THE WITNESS: The only thing I can tell the defense is
23 that I'd try. I'd do the best I can.

24 MR. ROBINSON: Basically, Your Honor, with the burden
25 that we have anyway, in clear conscience I, as counsel, cannot

1 subject Mr. Creech to the possibility.

2 THE COURT: All right. We appreciate your coming forward
3 with this, Mr. Gribble. We will excuse you, then, for cause,
4 and --

5 THE WITNESS: Well, I'm sorry I caused this, but I
6 didn't know. I never looked at the papers or anything.

7 THE COURT: Would you do this? Would you just, maybe
8 wait someplace until we get the other jurors in here so they
9 won't be asking you questions or anything and, then, perhaps
10 go. Is your suitcase in the jury room?

11 THE WITNESS: Yes, sir.

12 THE COURT: Perhaps wait until we get all the other
13 jurors out here and, then, go ahead and pick up your things.
14 You'll be excused. Thank you.

15 THE WITNESS: Thank you.

16 MR. ROBINSON: Thank you very much.

17 THE COURT: Well, I suppose we have no alternative but
18 to try the case with one alternate at this point.

19 MR. REMAKLUS: We might -- would you consider, Your Honor,
20 calling in some of our, say a half dozen or dozen of our other
21 jurors, and maybe during the noon hours we could select --
22 they'd have to be here now, we'd have to hold up the trial, now,
23 to select another alternate.

24 THE COURT: Yeah.

25 MR. ROBINSON: Your Honor, for --

1 MR. REMAKLUS: I'd hate to start it --

2 MR. ROBINSON: For the record, so that it is and will be
3 entirely clear, I was most impressed of His Honor's observation
4 that just accidentally during the course of the trial with
5 Mr. Gribble even being as careful as he could, there's possibly
6 some slough-off of his information that might have affected and
7 contaminated the rest of the jury and I wanted that on the
8 record because that was one of the points that I felt most
9 strongly in urging the Court to challenge.

10 THE COURT: Well, of course, there hasn't been, as near
11 as I can tell from Mr. Gribble's testimony. If we want to bring
12 him back and ask it, I think you are talking about the future
13 and not the past. There's no indication Mr. Gribble has even
14 talked to any other panel members since he made the connection.

15 MR. ROBINSON: I'm satisfied with his integrity and
16 show of candor that that has not occurred.

17 THE COURT: Yes.

18 MR. REMAKLUS: If there is any questions at all that
19 Mr. Gribble has talked to the other jurors we would move to have
20 it on the record that he has not, by asking him the question.

21 THE COURT: Bring him back in just a minute. We'll ask
22 him that one question.

23 (Whereupon Mr. Gribble re-entered the courtroom.)

24 THE COURT: Just stand there, I'm sure we all know the
25 answer to this, knowing your integrity and sincerity about this,

1 Mr. Gribble, but for the record we need to ask you, have you
2 mentioned this to any of the other jurors? I take it you haven't
3 even seen any of them?

4 MR. GRIBBLE: No, sir, I haven't talked to anyone at all
5 even about the case, even my wife doesn't know.

6 THE COURT: Okay. Thank you.

7 MR. REMAKLUS: Thank you.

8 MR. THOMAS: Thank you, Your Honor.

9 THE COURT: Well, I'm reluctant to go ahead without
10 two alternates too. I'm certainly not going to declare a
11 mistrial and start the case over because we lost one alternate.

12 MR. ROBINSON: And the defense is not urging the
13 Court to do so. We are willing to proceed with one alternate.

14 THE COURT: I don't know how we could proceed otherwise,
15 other than without being -- compromising the situation as
16 picking and choosing jurors without bringing the entire panel
17 back and, of course, they were released last night from the
18 admonition the Court gave them so it's hard to tell what's
19 happened since last night.

20 MR. REMAKLUS: I suppose we should begin, Your Honor.

21 THE COURT: Counsel ready to proceed, then?

22 MR. REMAKLUS: State is ready.

23 MR. ROBINSON: Defense is, Your Honor.

24 THE COURT: All right.

25 I wonder, the Bailiff -- we'll have the one alternate

1 in -- excuse me, now, the one alternate in the very end seat.
2 Are those moveable chairs? Can we take one of those chairs so
3 they won't get confused?
4 VOICE: No, Your Honor, they are stationary.
5 THE COURT: Take one and leave the other one there.
6 Bring in the jury.
7 (Whereupon the jury entered the courtroom.)
8 THE COURT: I'm not real sure I recognize all your faces.
9 Let me just check the seating to see if we're in the right
10 seat.
11 We have -- I know Mrs. Honeycutt is the alternate
12 juror and that is the proper seat for you. Seat No. 1 is
13 Mrs. Everett -- well, we've sort of reversed it, but that's
14 really Seat No. 1 over there (indicating). Let's just stay
15 here where you are right now, maybe if we can -- then
16 Walter Nelson?
17 MR. NELSON: Yes.
18 THE COURT: Mr. Paul --
19 MR. MOLLENDORF: Yes.
20 THE COURT: Mr. Oberg?
21 MR. OBERG: Yes.
22 THE COURT: Six is Mrs. Kienholtz and Seven is
23 Mrs. Canterbury.
24 MRS. CANTERBURY: Yes.
25 THE COURT: And Eight, Mr. Jacobs.

1 MR. JACOBS: I'm over here.

2 THE COURT: You are Mr. Jacobs? Nine is Mrs. Bennett.

3 MRS. BENNETT: Um-hmm.

4 THE COURT: Ten is Mrs. Jameson.

5 MRS. JAMESON: Um-hmm.

6 THE COURT: Eleven is Mr. Charles and Twelve is
7 Mrs. Hill.

8 Counsel agreeable to just letting the jurors stay
9 in the seats they are in right now?

10 Perhaps we'll get it rearranged after the first
11 recess. I'll give the Bailiffs a list. That will be Seat No. 1
12 back there (indicating) where Mrs. Kienholtz is. Mrs. Honeycutt,
13 you are in the right seat. You'll always come in first and take
14 the alternate seat. But, Seat No. 1 will be where Mrs. Kienholtz
15 is and, then, that will be Seat No. 6 where Mrs. Everett is.
16 Then, seven will be over here (indicating) and eight, nine, ten,
17 eleven and twelve. Mrs. Hill will be on the end here
18 (indicating) in twelve.

19 All right, we're going to have to give you a separate
20 oath. We're going to swear the regular panel first and, then,
21 swear Mrs. Honeycutt as an alternate juror separately. If the
22 regular panel, all except Mrs. Honeycutt, will rise, please,
23 and raise your right hand and the Clerk will swear you to try
24 the case.

25 (Whereupon the 12 jurors were sworn to try the cause.)

1 THE COURT: Be seated. Mrs. Honeycutt, if you will
2 stand, please then, and be sworn.

3 (Whereupon the alternate juror was sworn.)

4 THE COURT: Be seated.

5 Counsel may make their opening statement at this
6 time and, Mr. Remaklus, you may proceed.

7 MR. REMAKLUS: If it please the Court, Mr. Robinson,
8 ladies and gentlemen of the jury: I shall briefly outline
9 for you what the State expects to prove beyond a reasonable
10 doubt.

11 The State will prove beyond a reasonable doubt that
12 in the early morning hours of November 4, 1974, the defendant,
13 Thomas Eugene Creech, in cold blood, with premeditation and
14 malice did shoot and murder Tom Arnold and Wayne Bradford at a
15 wide place in the road along State Highway No. 55 near
16 Donnelly in Valley County, Idaho.

17 The State will provide a road map so-to-speak, for
18 you to follow in the chain of events with which we're involved
19 in this trial.

20 Our map will begin at Lewiston, Idaho on the north
21 where the defendant, with Carol Spaulding, were staying with
22 Carol Spaulding's mother.

23 The evidence will show that Tom Creech stole a
24 .22 pistol from the home of Carol Spaulding's mother and that
25 that is the weapon with which he killed Tom Arnold and

1 Wayne Bradford.

2 We will take the defendant and Carol Spaulding
3 south on State Highway No. 95 to where they were picked up as
4 hitchhikers by Tom Arnold and Wayne Bradford. That was along
5 near the highway interchange on State Highway 95, Federal
6 Highway 95 on the Clearwater River.

7 We will trace their -- we will show that at that
8 point they were picked up in an old, greenish-blue and white
9 Buick with Colorado license plates. We can trace their course
10 of their travels on south to Grangeville where they attempted to
11 sell a battery charger, when they stopped to get gas, to sell a
12 battery charger for some gas and beer money.

13 We'll proceed on south along the Salmon River near
14 Slate Creek, we will continue on south to New Meadows where
15 State Highway 55 runs into the Highway 95; they turned off of
16 and onto the State Highway 55 at New Meadows, drove through
17 McCall to Donnelly where the murders were committed by this
18 man.

19 We will follow their activities on past the scene
20 of the crime to where they spent the rest of that night near
21 Cougar Mountain Lodge, south of Cascade, Idaho, where they ran
22 the car out of gas to keep warm, it was cold and where the
23 car was abandoned.

24 We will follow their travels then on south through
25 Boise to Glens Ferry, Idaho, where they were arrested. The

1 State will prove that the killings were intentional, premeditated
2 and with malice. We will show where the defendant admitted the
3 killings shortly after arrest; claiming that he was protecting
4 Carol Spaulding.

5 Next we will show an admission of these offenses
6 where he claimed that he was protecting himself and finally,
7 ladies and gentlemen, we will present an admission that this
8 man, after a close call with death himself as a result of a
9 plane crash, admitted that, without cause or provocation, he
10 killed Tom Arnold and Wayne Bradford in cold blood.

11 THE COURT: At this time we'll have the Clerk read the
12 Information to the jury and state the plea of the defendant
13 that's been entered here to the Information.

14 (Information read by the Clerk.)

15 THE COURT: I will advise the members of the jury that
16 the defendant has entered pleas of not guilty to each count
17 of the Information.

18 Call your first witness.

19 MR. REMAKLUS: May we have a very brief recess to
20 transport our Exhibits to the courtroom? They are still locked
21 up, Your Honor.

22 THE COURT: All right.

23 MR. ROBINSON: Your Honor, just before the recess I would
24 like the record to show that I reserve my opening statement
25 until my case.

1 THE COURT: Very well. We will take a short recess,
2 ladies and gentlemen. I'm required by law to give you an
3 admonition at every recess. I'm going to explain it to you in
4 some detail at this time, but we'll just remind you of it at
5 future recesses without going over the details every time, but
6 I will ask you to abide by it implicitly in detail at every
7 recess.

8 You are not permitted to discuss this case among
9 yourselves until the case is fully submitted to you; likewise
10 you are to keep your minds entirely open and not make a final
11 decision on any issue in the case until the case is fully
12 submitted to you.

13 The case will not be fully submitted until you've
14 heard all of the evidence presented by both sides, received
15 instructions of the Court and heard the closing arguments of
16 both attorneys and retired to deliberate on your verdict.
17 That's the first time, then, that you can discuss the case
18 among yourselves and form opinions and make decisions on the
19 issues in the case.

20 Likewise, during any recess you shouldn't let
21 anyone else approach you and discuss the case with you, you
22 shouldn't discuss the case with anyone else. It goes without
23 saying, of course, you shouldn't -- just shouldn't let anyone
24 approach you and discuss the case with you at all.

25 You will be sequestered, as you all know, you will

1 be under the direction of the Bailiffs who will be under an oath
2 not to let you communicate with anyone about the case or let
3 anyone communicate with you about the case and you, of course,
4 will be prohibited and prevented from hearing any news accounts
5 about the case. I don't think this is going to happen, but, if
6 it should happen that you inadvertently have any opportunity to
7 do that, I would commit you to your oath not to do it and learn
8 everything about the case here in open court from evidence that
9 is admitted by the Court here because your decision has to be
10 based on evidence that's properly admitted and presented here
11 in open court while you are here in open court to hear it.

12 So, if you will please abide by that admonition at
13 this and all further recesses, then.

14 (Jury left the courtroom.)

15 MR. REMAKLUS: I imagine about 15 or 20 minutes. We
16 do have several packages and I want Mr. Robinson to go over --

17 THE COURT: We will take a recess at this time.

18 (Recess taken.)

19 MR. ROBINSON: Your Honor, may I inquire what the
20 Court desires in regards to waiving call of the jury after
21 each recess?

22 THE COURT: I'm simply going to let the record show the
23 jurors are all present. If any Counsel wants to voice an
24 objection they can if they think they aren't all present, but --

25 MR. ROBINSON: Thank you.

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(Jurors re-entered the courtroom.)

THE COURT: Direct the Clerk to let the record show the jurors are all present.

MR. THOMAS: Your Honor, before proceeding further we would like to inquire for the record whether there is any objection to having prospective witnesses in the courtroom during the testimony of other witnesses?

MR. ROBINSON: May the record show the defense has no objection.

THE COURT: Very well.

MR. THOMAS: Thank you, Your Honor.

THE COURT: All right, the witnesses may remain in the courtroom, then.

Call your first witness.

MR. REMAKLUS: Call Johnny Hill.

1 JOHNNY J. HILL,
2 a witness produced on behalf of the State, having been first
3 duly sworn, took the stand and testified as follows:

4
5 DIRECT EXAMINATION

6 BY MR. REMAKLUS:

7 Q State your name, please.

8 A Johnny J. Hill.

9 Q And where do you live, Mr. Hill?

10 A Horseshoe Bend, Idaho.

11 Q What is your age?

12 A Twenty-four.

13 Q And what is your occupation?

14 A I'm a logger.

15 Q By whom are you employed?

16 A Branda Logging in Horseshoe Bend.

17 Q How long have you been following that profession?

18 A Oh, about the last two and a half to three years.

19 Q Were you engaged in logging in November, 1974?

20 A Yes, sir, I was.

21 Q Where were you working early November, '74?

22 A Outside of Donnelly, Idaho, about four or five
23 miles.

24 Q Who were you working for then?

25 A Branda Logging.

1 Q And what kind of work do you do out in the woods?

2 A Well, I'm a faller by profession but at times I
3 drive skidder and do whatever he wants -- my boss wants me to
4 do.

5 Q Okay. Now, directing your attention to the
6 4th day of November, 1974, you were working in the logging
7 business on that date?

8 A Yes, sir.

9 Q Did you have occasion to be in the vicinity of
10 Donnelly, Idaho, on Highway 55 on the evening of that day?

11 A Yes.

12 Q And who were you with, if anyone?

13 A Roy Hull.

14 Q And is he a co-worker?

15 A Yes, he works for his father and that -- my boss
16 and his father are halves on equipment and we were working
17 together at the time.

18 Q Did you have occasion to be going through
19 Donnelly, Idaho, south on State Highway 55 towards Cascade on
20 that evening?

21 A Yes. I was staying in Cascade with my mother-in-law
22 and her husband.

23 Q Were you and Mr. Hull going home from work that
24 evening?

25 A Yes, we were.

1 Q Did you have occasion, Mr. Hill, to stop there at a
2 wide place of the road at Highway 55 where the old -- what we
3 refer to as the "Old Highway" splits off?

4 A Yes.

5 Q And why did you stop there?

6 A Put oil in my pickup. It had a bad head gasket --
7 or oil leak in it and, so, the light flashed on so we stopped
8 and I pulled over and we stopped to put oil in my pickup.

9 Q When you say "we" who is that?

10 A Me and Roy Hull.

11 Q And about what time of day was it?

12 A Oh, between 5:30 and quarter to six, somewhere in
13 there.

14 Q Was it still light?

15 A Just -- yes, it was.

16 Q You remember what the weather was then?

17 A Oh, it was kind of cloudy and looked like snow,
18 cold, a little windy.

19 Q There was no snow on the ground at that time, was
20 there?

21 A No.

22 Q Well, when you stopped there to put oil in, what,
23 if anything, did you observe at that time and place?

24 A Well, we stopped and I was sitting there and Roy
25 got out and put the oil in; which was in the back of my pickup,

1 and he called my attention to a sleeping bag and a blanket that
2 were laying in the ditch. So, I got out to look and I noticed
3 that there was blood on the ground by my door and that there
4 was kind of a trail that run underneath my pickup and, then, I
5 walked around to the other side and it had forked and come out
6 in two trails and went down to this blanket and sleeping bag.
7 I went over and picked them up and there was a dead man under
8 one.

9 Q Now, can you kind of describe the area there where
10 you stopped?

11 A Well, the Highway 55 runs north and south and, as
12 you say, the old highway takes off and would be to the east --
13 or to the west, and it's just kind of a, oh, a triangle there.
14 We pulled off there and there was a fence that runs along the
15 edge of this field and the ditch on the highway side of the
16 fence. They were just laying in this ditch covered up.

17 Q And where you had stopped, was that on a gravel or
18 surface?

19 A Yes, it was.

20 Q You had actually pulled off of the oil portion of
21 the highway, is that right?

22 A Yes, yes.

23 Q Mr. Hill, handing what's been marked as State's
24 Exhibit 1-J I'd ask you if you have seen that before?

25 A Yes, I have.

1 Q And were you present when that photograph was
2 taken?

3 A Yes, I was.

4 Q And where was that photograph taken?

5 A Right there where the old highway takes off from
6 Highway 55, about, oh, three-quarters of a mile south of
7 Donnelly, Idaho.

8 Q And was that taken on the evening of November 4, 1974?

9 A Yes.

10 Q You were present when it was taken?

11 A Yes, I was.

12 Q Was it taken after darkness had fallen?

13 A Yes, they were there -- the Sheriff didn't get
14 there until after dark because we had walked into town and
15 called him and I just left my rig parked there. Then, we went
16 back to the scene of the crime and, then, he come, the Sheriff
17 got there and started questioning us and, then, other people
18 arrived and they started taking pictures.

19 Q And you -- did you and Mr. Hull go back to Donnelly
20 to call the Sheriff?

21 A Yes, we did.

22 Q Did you walk back?

23 A Yes, we did.

24 Q As a matter of fact, you ran, sort of, didn't you?

25 A Yes.

1 MR. ROBINSON: Objection to leading and suggestive.
2 THE COURT: Sustained. Strike the answer and instruct
3 you to disregard it, ladies and gentlemen.
4 MR. REMAKLUS: Thank you.
5 Q BY MR. REMAKLUS: Is this a true and accurate
6 representation of the scene as it was when you saw it that
7 evening?
8 A Yes, it is.
9 MR. REMAKLUS: I would ask that State's Exhibit 1-J be
10 admitted into evidence and that an enlargement thereof receive
11 the same number, Your Honor.
12 MR. ROBINSON: No objection, Your Honor.
13 THE COURT: 1-J will be admitted.
14 (State's Exhibit No. 1-J, a previously marked
15 exhibit, admitted into evidence.)
16 MR. REMAKLUS: Would you pass this around, please.
17 Q BY MR. REMAKLUS: Handing you what has been marked
18 for identification as Exhibit 1-C, could you tell us what that
19 is, please.
20 A It's a sleeping bag with a board over it. It was
21 on one -- covering one of the men that was laying in the ditch.
22 Q Is that on the night in question?
23 A Yes, it was.
24 Q Were you present when that was taken?
25 A Yes, I was.

1 Q And is that a true and accurate representation of
2 what it portrays?

3 A Yes, it is.

4 Q And does this appear to be an enlargement of the
5 same picture?

6 A Yes.

7 Q Thank you.

8 MR. REMAKLUS: I would ask that State's 1-C be admitted.

9 MR. ROBINSON: No objection, Your Honor.

10 THE COURT: 1-C will be admitted.

11 (State's Exhibit 1-C, a previously marked exhibit,
12 admitted into evidence.)

13 MR. REMAKLUS: Do you wish to see the Exhibit?

14 THE COURT: No.

15 MR. REMAKLUS: Would you pass this around.

16 Q BY MR. REMAKLUS: Did you have occasion, or did
17 you say that you looked under the blanket and the sleeping bag
18 on that occasion?

19 A Yes, I did.

20 Q Handing you what's been marked for identification
21 as State's 1-G, can you tell us what it is, please.

22 A It's a picture of the man that was laying under
23 the blanket.

24 Q And were you present when that was taken?

25 A Yes, I was.

1 Q And that was taken on the night in question that
2 we've been discussing?
3 A Yes.
4 Q And this is a true and accurate representation of
5 what it tends to portray?
6 A Yes. That's what I saw.
7 MR. REMAKLUS: We'd offer in evidence State's Exhibit
8 1-G.
9 MR. ROBINSON: Object, Your Honor, as to being
10 unnecessary and inflammatory.
11 THE COURT: I'll take a look at it.
12 Objection is overruled. It will be admitted.
13 Q BY MR. REMAKLUS: Let me ask you if the enlargement
14 is an enlargement of the same --
15 A Yes.
16 MR. REMAKLUS: Thank you.
17 (State's Exhibit 1-G, a previously marked exhibit,
18 admitted into evidence.)
19 Q BY MR. REMAKLUS: Handing you what has been marked
20 for identification as State's Exhibit 1-A, can you tell me
21 what it is, please.
22 A It's a picture of the second man.
23 Q Now, were you present when that picture was taken?
24 A I was present, yes, when it was taken.
25 Q And was that taken at the time and place that we

1 have been discussing?

2 A. Yes.

3 Q And was that the position of the second man when
4 you first observed him?

5 A. No.

6 Q And what difference, if any?

7 A He was laying more on his stomach and his shirt
8 was over his head.

9 Q And this was taken after he was turned over onto
10 his back?

11 A. Yes.

12 Q And is that a true and accurate portrayal of the
13 scene as it was when that photograph was taken?

14 A. Yes.

15 MR. REMAKLUS: I would offer State's 1-A, Your Honor.

16 Q BY MR. REMAKLUS: Is this enlargement the same?

17 A. Yes, it is the same.

18 MR. ROBINSON: Same objection, Your Honor, unnecessarily
19 inflammatory.

20 THE COURT: The objection is overruled. It will be
21 admitted.

22 (State's Exhibit 1-A, a previously marked exhibit,
23 admitted into evidence.)

24 MR. REMAKLUS: Please pass that around.

25 Q BY MR. REMAKLUS: Mr. Hill, handing you what's been

1 marked for identification as State's Exhibit 1-B, would you
2 tell me what that is, please.

3 A. It's a picture of the man that, as he was laying
4 face down, exactly how I saw him.

5 Q. Now, this is the second man that you identified?

6 A. Yes.

7 Q. And was that taken before he was turned over?

8 A. Yes, it was.

9 Q. And, Mr. Hill, were you present when that photograph
10 was taken?

11 A. Yes.

12 Q. Is it a true and accurate representation of the
13 scene as it was taken?

14 A. Yes, it is.

15 Q. And when was that taken?

16 A. The night of November the 4th.

17 Q. The night we've been discussing here?

18 A. Yes, it is.

19 MR. REMAKLUS: Thank you, I would offer 1-B -- and this
20 is -- is this enlargement the same. Would you look at it,
21 please.

22 THE WITNESS: Yes.

23 MR. REMAKLUS: Thank you.

24 I would offer State's 1-B.

25 MR. ROBINSON: Same objection, Your Honor, unnecessarily

1 inflammatory and repetitious.

2 THE COURT: Overruled, 1-B will be admitted.

3 MR. REMAKLUS: Thank you, Your Honor.

4 (State's Exhibit 1-B, a previously marked exhibit,
5 admitted into evidence.)

6 MR. REMAKLUS: Pass that around, please. I just want to
7 provide an opportunity for the jury to look at the Exhibits,
8 Your Honor.

9 THE COURT: Yes.

10 Q. BY MR. REMAKLUS: Mr. Hill, I think we've been
11 referring to the date of November 4th, 1974. I wish you would
12 search your memory and see if it was, actually, November 5th,
13 1974?

14 MR. ROBINSON: Object, leading and suggestive,
15 Your Honor.

16 THE COURT: Sustained.

17 Q. BY MR. REMAKLUS: Again, directing your attention
18 to the night that we have been discussing, after you notified
19 the Sheriff's office of what you had found, what did you do?

20 A. We got a ride back to the -- where the bodies
21 were and just waited there for the Sheriff.

22 Q. And how long were you around there that evening?
23 Would you have any idea?

24 A. Oh, probably two and a half, maybe three hours
25 all total.

1 Q And do you remember who came to the scene from the
2 Sheriff's office?
3 A Yes, I do.
4 Q And who was that?
5 A The Sheriff from Cascade. I can't remember his
6 name, I'm sorry.
7 Q Um-hmm.
8 A But, he's in the courtroom here.
9 Q Yes. Were there other law enforcement people
10 there?
11 A Yes, sir. Mr. Lynskey was there, he showed up and
12 a couple other people.
13 Q Then -- did you then, after this period of time
14 that you were present at the scene, did you then go on home
15 that evening?
16 A Yes.
17 Q Do you remember what day of the week it was?
18 A It was a Monday, I think.
19 Q And, then, that was your last contact with the
20 scene as it was that night; wasn't it, Mr. Hill?
21 A Yes.
22 MR. REMAKLUS: You may examine, Mr. Robinson.
23 MR. ROBINSON: I believe this has been previously
24 marked?
25 May I approach the witness, Your Honor?

1 THE COURT: Yes.

2

3

CROSS EXAMINATION

4

BY MR. ROBINSON:

5

6

Q Mr. Hill, handing you what has been previously marked as State's Exhibit No. 4 --

7

A Yes.

8

9

Q -- can you identify that particular object in that plastic bag?

10

11

12

A It looks like a sleeping bag, the one that was laying over the victim that was laying face down, on his stomach.

13

14

MR. ROBINSON: All right. We'd ask that State's Exhibit No. 4 be admitted.

15

MR. REMAKLUS: No objection.

16

THE COURT: Four will be admitted.

17

18

(State's Exhibit No. 4, a previously marked exhibit, was admitted into evidence.)

19

MR. ROBINSON: May I approach the witness again, sir?

20

THE COURT: Yes.

21

22

23

Q BY MR. ROBINSON: Mr. Hill, showing you what's been previously marked as State's Exhibit No. 5, can you identify that particular instrument that's in the plastic bag?

24

A It looks like a blanket.

25

Q Pardon?

1 A. It looks like a blanket.
2 Q. Yes. And can you identify it in particular?
3 A. Yes, I can.
4 Q. Have you seen it before?
5 A. Yes, I can. It was laying over the man that was
6 laying face up.
7 MR. ROBINSON: All right. We ask the admission of
8 State's Exhibit No. 5.
9 MR. REMAKLUS: No objection, Your Honor.
10 THE COURT: Five will be admitted.
11 (State's Exhibit No. 5, a previously marked exhibit,
12 admitted into evidence.)
13 MR. ROBINSON: No further questions, Your Honor.
14 THE COURT: Any redirect?
15 MR. REMAKLUS: I think not. Thank you.
16 THE COURT: You may step down.
17 MR. REMAKLUS: May this witness be excused from further
18 attendance at the trial?
19 MR. ROBINSON: Defense has no objection, Your Honor.
20 THE COURT: All right, you may be excused if you wish
21 to leave, Mr. Hill.
22 MR. HILL: Thank you.
23 MR. REMAKLUS: I would call Roy Lynn Hull.
24
25

1 ROY LYNN HULL,
2 a witness produced on behalf of the State, having been first
3 duly sworn, took the stand and testified as follows:
4

5 DIRECT EXAMINATION

6 BY MR. REMAKLUS:

7 Q State your name, please.

8 A Roy Lynn Hull.

9 Q And where do you live, Mr. Hull?

10 A Banks, Idaho.

11 Q And what is your age, please.

12 A Sixteen.

13 Q And are you employed? Are you working?

14 A Yeah.

15 Q And what kind of work do you do?

16 A I drive a skidder for my dad.

17 Q And when you drive a skidder, what business is
18 this in?

19 A Logging.

20 Q And what's that, a skidding Cat, or skidding
21 machine?

22 A Yeah, it's a skidding machine.

23 Q And how long have you been engaged in the logging
24 business?

25 A About two years.

1 Q Were you engaged in the logging business in
2 November, 1974?

3 A Yes.

4 Q Directing your attention to Tuesday, November 5,
5 1974, were you working on -- in the logging business on that
6 day?

7 A Yes.

8 Q Do you remember where you were working?

9 A Donnelly.

10 Q And that's in Valley County, Idaho?

11 A Um-hmm.

12 Q And whereabouts were you working on that day?

13 A About five miles out of Donnelly.

14 Q And where were you staying?

15 A Cascade.

16 Q And that's south of Donnelly, is it?

17 A Yeah.

18 Q Do you know how far that is?

19 A Fifteen miles.

20 Q And how were you going to and from work on that
21 particular day?

22 A With Johnny Hill.

23 Q Were you riding with him?

24 A Yes.

25 Q Whose vehicle were you in?

1 A. John's.

2 Q. Now, on this -- on this particular day that I

3 mentioned, after work, were you going back home to Cascade

4 where you were staying with Mr. Hill?

5 A. Yes.

6 Q. Did you have occasion to stop on the highway a

7 little way south of Donnelly?

8 A. Yes.

9 Q. And why did you stop?

10 A. To put oil in his pickup.

11 Q. And when you stopped there, who got out?

12 A. I did.

13 Q. And what did you do?

14 A. I walked down to the back of the pickup and got

15 the oil and went around the front and opened the hood and

16 went to put the oil in and I looked in the ditch and saw a

17 blanket and sleeping bag, so I told John about it and he got

18 out and walked over there. We looked underneath them and

19 there they were.

20 Q. And there what were?

21 A. The two guys, the dead guys.

22 Q. Now, there at the scene when you stopped the

23 pickup, what side of the road did you pull off on; do you

24 remember?

25 A. Yeah, it was the right.

1 Q And which direction were you headed?
2 A South.
3 Q And with reference to the vehicle, where were the
4 bodies?
5 A They were on the passenger side off in the ditch.
6 Q Handing you what's been admitted in evidence as
7 Plaintiff's Exhibit 1-B, were you present when that photograph
8 was taken?
9 A Yes.
10 Q And is that a true and correct representation of
11 the scene as it was at that time?
12 A Yes.
13 Q And what day was that taken?
14 A November 5th.
15 Q And was that last year?
16 A Yes.
17 Q Handing you what's been admitted as Plaintiff's
18 1-A, have you -- is that a true and correct representation of
19 the scene as it was when the picture was taken?
20 A Yeah.
21 Q And was that taken on the day that we've been
22 discussing?
23 A Yes.
24 Q And State's Exhibit 1-C, do you recognize that?
25 A Yes.

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Q. And what is that?

A. That's the sleeping bag that the guy was laying under with the shirt over his head.

Q. Was that -- do you recognize that as being a correct representation of the scene at that time?

A. Yes.

Q. And that, again, is on the day in question?

A. Yes.

Q. Handing you Plaintiff's 1-G, is that an accurate portrayal of the scene at that time?

A. Yes.

Q. And that, again, was taken on the day that we have been discussing?

A. Yes.

Q. And Plaintiff's Exhibit 1-J, would you look at that and tell me what that is, please.

A. That's both of them, the guy laying in the blanket and the sleeping bag.

Q. Is that a representation of the scene as it was on the day that we've been discussing?

A. Yes.

Q. Thank you. Handing you State's Exhibit 4, can you tell me what that is?

A. It's a sleeping bag from the guy that was laying on his stomach, the shirt over his head.

1 Q Um-hmm. That's the sleeping bag that was in those
2 pictures, same one?

3 A Yes.

4 Q How about this, State's Exhibit No. 5. Do you
5 recognize that?

6 A Yeah, that was the blanket that was covering the
7 guy that was face up.

8 Q And is this the blanket that was in those pictures?

9 A Yes.

10 Q Thank you. After you discovered the bodies, what,
11 if anything, did you do?

12 A We walked back to town, back into Donnelly, and
13 called the Sheriff.

14 Q About how far is that?

15 A About a mile.

16 Q And then did you return to the scene where the
17 bodies were?

18 A Yes.

19 Q And what, if anything, did you do then? Did you
20 stay around there for awhile?

21 A Yeah. We waited for the Sheriff to get there.

22 Q And did the law enforcement officials arrive?

23 A Yes.

24 Q And can you tell us what you did and what happened
25 after the law enforcement people got there?

1 A. Well, they talked to us and asked us about our
2 names and where we worked and asked us our -- who we were
3 working for. We had to write it down and, then, they told us
4 to go ahead and go home.

5 Q. How long were you there at the scene?

6 A. About two or three hours.

7 Q. Was it dark then when you went home?

8 A. Yeah.

9 MR. REMAKLUS: You may examine, Mr. Robinson.

10 MR. ROBINSON: No questions, Your Honor.

11 THE COURT: You may step down.

12 MR. ROBINSON: I assume the State wants this man to be
13 excused from further attendance? If so, the defendant agrees.

14 MR. REMAKLUS: Yes.

15 THE COURT: Mr. Hull, you may leave if you want to,
16 then.

17 MR. HULL: Thank you.

18 MR. REMAKLUS: Your Honor, it's two minutes to twelve
19 and I think our next witness will, probably, be a lengthy one,
20 so maybe --

21 THE COURT: Well, let's start with him.

22 MR. REMAKLUS: All right. Call Mr. Maxwell.
23
24
25

1 MARTIN J. MAXWELL,
2 a witness produced on behalf of the State, having been first
3 duly sworn, took the stand and testified as follows:
4

5 DIRECT EXAMINATION

6 BY MR. REMAKLUS:

7 Q State your name, please.

8 A Martin J. Maxwell.

9 Q And you generally go by the name of Jim?

10 A That's correct.

11 Q What is your occupation?

12 A I'm Chief Deputy Sheriff for Valley County.

13 Q How long have you had that job, Mr. Maxwell?

14 A Since the first of September of 1974.

15 Q And had you had previous law enforcement experience?

16 A Yes, I have.

17 Q Would you tell us what it is?

18 A Approximately nine and a half years total law
19 enforcement experience; first starting in Lapwai, Idaho, then
20 in Lewis County, Idaho, at Craigmont.

21 Q What position did you have in Lapwai and
22 Craigmont?

23 A I was a patrolman in Lapwai, Chief of Police in
24 Craigmont, then on to Kamiah, Idaho where I was employed as
25 patrolman, then Chief of Police in Kamiah; as a Deputy Sheriff

1 in Idaho County at Riggins for -- just prior to going to
2 Valley County.

3 Q And you are still so employed by Valley County,
4 Idaho, are you not?

5 A Yes, I am.

6 Q And in early November of 1974 were you working for
7 Valley County as Chief Deputy Sheriff?

8 A Not in November, no. I was promoted to Chief
9 Deputy the first of January in 1975.

10 Q So, what was your job then in November?

11 A As a Deputy Sheriff.

12 Q Directing your attention to November 5th, 1974,
13 were you on duty that day?

14 A Yes, I was.

15 Q And in the late afternoon of that day, did you
16 have occasion to be at the Sheriff's office?

17 A Yes, I was.

18 Q And in what city is that?

19 A In Cascade, Idaho.

20 Q And did you have occasion on that day -- do you
21 remember what day of the week that was?

22 A That was a Monday, as I recall.

23 Q Did you have occasion on that day to investigate
24 an incident near Donnelly, Idaho?

25 A Yes, I did.

1 Q And do you remember about what time it was when
2 you were notified?

3 A At approximately 5:30 in the evening.

4 Q Um-hmm. And then did you respond to that
5 notification?

6 A Yes, I did.

7 Q Was there anyone with you?

8 A Not in my vehicle, no.

9 Q What, if anything, did you do, Deputy Maxwell?

10 A When I was first advised of the situation I contacted
11 Sheriff Lynskey who was in his office at the time, advised him
12 of the situation and we proceeded on to the scene.

13 Q And where did you go?

14 A Went to one mile south of Donnelly, Idaho, at the
15 junction of Old Highway 15 and State Highway 55.

16 Q And what, if anything, did you find there?

17 A First observed a pickup as I pulled in at the scene.
18 It was pointed towards the south, several people in the
19 immediate area standing around. I pulled in and stopped and
20 moved everyone back out of the immediate area.

21 Q And was it still daylight?

22 A It was just at dusk.

23 Q Describe the weather on that day; would you please?

24 A As near as I can recall it was cold, a little bit
25 overcast. It frosted fairly heavy that night.

1 Q And describe who was there when you arrived; if
2 you recall?

3 A Mr. Hill and Mr. Hull who have just testified,
4 Mr. Smith who operates Donnelly Country Store was just
5 arriving at that location when I arrived. Shortly after I
6 arrived Sheriff Lynskey arrived.

7 Q Did you travel up there by yourself in your
8 patrol car?

9 A Yes, I did.

10 Q Did any other law enforcement people show up there
11 at that particular place that evening?

12 A Sheriff Lynskey, Mr. Gene Hawker who I formally
13 had known as a State Investigator, Mr. Wesley Woodall, yourself,
14 the Coroner, Burton Walker, Deputy Brian Miller of Valley
15 County Sheriff's Department and two McCall city police
16 officers.

17 Q And would you describe what, if anything, you
18 found at the scene at that time?

19 A After I had arrived at the scene and made
20 contact with Mr. Hill and Mr. Hull they pointed out the location
21 of two bodies in the drainage ditch to the west of Highway 55.

22 Q Can you describe for us the physical aspects of
23 the scene as it was that night?

24 A The scene is, basically, in a triangular shape.
25 The point of the triangle would be to the northerly direction.

1 They would be located at a point about halfway through the
2 triangle section.

3 Q Is there -- is this a pretty wide place there at
4 the edge of the road, Mr. Maxwell?

5 A Yes, it is. Customarily the State maintenance
6 vehicles and other heavy equipment park in there and use that
7 as a turn-around area.

8 Q And is this off of the old portion of the highway?

9 A Yes, it is.

10 Q And which highway are you referring to now?

11 A It's directly at the junction of Highway 55 and
12 Old Highway 15. I would assume that it would be called a
13 turn-out on Highway 55.

14 Q And do you know in what county that is,
15 Mr. Maxwell?

16 A That's in Valley County, Idaho.

17 Q How far is this from the City of Donnelly?

18 A Approximately one mile and one-tenth of a mile.

19 Q Which direction from Donnelly is it?

20 A South.

21 THE COURT: We will take our noon recess at this time,
22 ladies and gentlemen, if you will remember the admonition,
23 don't discuss the case among yourselves or with anyone else,
24 keep your minds entirely open at this point.

25 We'll be in recess until 1:30.

26 (Noon recess taken.)

1 WALLACE, IDAHO, THURSDAY, OCTOBER 9, 1975, 1:30 P.M.

2
3
4 THE COURT: Let the record show the jurors are all
5 present.

6 Proceed.

7 MR. REMAKLUS: Mr. Gambee, would you read the last
8 question for me, please.

9 (Question and answer read by the Reporter.)

10
11 DIRECT EXAMINATION (Continued)

12 BY MR. REMAKLUS:

13 Q Mr. Maxwell, I'm going to hand you the photographs
14 that have been admitted in evidence, State's Exhibits 1-J,
15 1-C, 1-A, 1-G --

16 THE COURT: I don't think 1-G is admitted. 1-B --

17 MR. REMAKLUS: 1-B was not admitted --

18 THE CLERK: A, B, C, G and J.

19 MR. REMAKLUS: Oh, yeah, G.

20 Q BY MR. REMAKLUS: And State's 1-B. I'd ask you to
21 look at them and see if -- look at them briefly.

22 Which one are you looking at now, Mr. Maxwell?

23 A I'm looking at 1-G.

24 Q Okay. And what does that -- have you seen the
25 picture before?

1 A. Yes, I have.
2 Q. Were you present when this was taken?
3 A. Yes, I was.
4 Q. And where was it taken?
5 A. That was taken at one mile south of Donnelly in
6 Valley County.
7 Q. On the evening that we have been discussing?
8 A. Yes.
9 Q. Do you know who was in the photograph?
10 A. Yes, we had identified this person as
11 Thomas Edward Arnold.
12 Q. Thomas Edward Arnold?
13 A. That's correct.
14 Q. I don't think the jurors can hear you, Mr. Maxwell.
15 A. That was identified as Thomas Edward Arnold.
16 Q. And how was this identification effected?
17 A. Through papers located within the vehicle and the
18 fingerprint classifications.
19 Q. All right.
20 A. This is 1-A.
21 Q. And are you familiar with the photograph marked
22 1-A?
23 A. Yes, I am.
24 Q. And was that taken on the night in question?
25 A. Yes, it was.

1 Q And do you know who that is portrayed in it?
2 A Yes. That person has been identified as
3 John Wayne Bradford.
4 Q And how was that identification achieved?
5 A Through fingerprint classification and photo.
6 Q And it has been established and the identities
7 of these two men?
8 A Yes.
9 Q Mr. Maxwell, are the other photographs that you
10 have in your hands, do they portray the scenes as they were
11 at that night when those photographs were taken?
12 A Yes, they do.
13 Q And did you have occasion on that evening to make
14 any measurements of the scene there one mile south of
15 Donnelly?
16 A Yes, I did. I made a detailed diagram.
17 Q Did you have any assistance with that?
18 A Yes, I did.
19 Q And who assisted you?
20 A State Investigator Wesley Woodall.
21 Q And did you then prepare a diagram from your --
22 the measurements that were taken?
23 A Yes, I did.
24 Q And how many of these diagrams did you make,
25 Mr. Maxwell?

1 A. I made one small diagram at the scene. At a
2 later date I enlarged that diagram.

3 MR. REMAKLUS: May I approach the bulletin board over
4 there (indicating), Your Honor?

5 THE COURT: Yes.

6 MR. REMAKLUS: My list shows that that has been
7 identified, or marked, as State's Exhibit 3-A; although,
8 without taking it down I cannot make that determination. I
9 would like to have it marked 3-A, if I may, Your Honor.

10 THE COURT: My list shows 3 is a small diagram and 3-A
11 is a large diagram.

12 MR. REMAKLUS: Yes, and this is the large diagram I am
13 referring to.

14 THE COURT: All right, it will be marked 3-A, then.
15 I'll let the Clerk mark it during a recess. It will be deemed
16 marked at this time 3-A.

17 (State's Exhibit 3-A, marked for identification.)

18 MR. REMAKLUS: May I have Officer Maxwell leave the
19 witness stand and approach the diagram and explain the same,
20 Your Honor?

21 THE COURT: Yes.

22 MR. REMAKLUS: Would you do so, please.

23 Q. BY MR. REMAKLUS: Officer Maxwell, if you'd stand
24 to the right of the diagram and use that pointer then Counsel
25 can see it and the Judge and witnesses.

1 MR. ROBINSON: Your Honor, before this is gone into,
2 may the record indicate whether or not the State is going to
3 ask for admission of this Exhibit before it's being explained?

4 MR. REMAKLUS: I do intend to offer it.

5 MR. ROBINSON: If you will offer it, I will have no
6 objection.

7 MR. REMAKLUS: I would offer the same.

8 THE COURT: I think it would be appropriate to do that.

9 All right, what has been deemed 3-A will be
10 admitted as 3-A.

11 MR. ROBINSON: Thank you, Your Honor.

12 MR. REMAKLUS: Thank you.

13 (State's Exhibit 3-A admitted into evidence.)

14 Q BY MR. REMAKLUS: Would you explain the diagram,
15 please, Officer Maxwell?

16 A Yes. This is State Highway 55 and is north and
17 southerly directions. Right here (indicating) is State
18 Highway -- the Old Highway 15. It goes towards --

19 THE COURT: Just a minute. Are you having a hard time
20 seeing number three?

21 VOICE: I can see it.

22 THE COURT: We can move it if it will make it easier.
23 I think it will be easier to move it over.

24 MR. REMAKLUS: Why don't you move it to the left a
25 little. Is that better?

1 VOICES: Yes.

2 THE WITNESS: Old Highway 15 goes towards the LDS Church
3 Camp.

4 This area right in here (indicating) is a large
5 turn-out area. It comes in -- back onto the highway at the
6 junction of Highway 55 and Old Highway 15.

7 At approximately this location (indicating) is
8 where I first observed Mr. Hill and Mr. Hull's vehicle when
9 I arrived, coming from the south, from Cascade.

10 At a point 37 -- or, excuse me, at a point 32 feet
11 from where their vehicle and this post were located is where
12 the two bodies of the -- Mr. Arnold and Mr. Bradford were
13 located. They were pointed in a northerly direction, head
14 and feet (indicating). Arnold was furthest to the north and
15 Mr. Bradford was furthest to the south. He was laying face
16 down in this location. Mr. Arnold was laying face up in
17 this position.

18 We made several measurements, there was -- several
19 locations marked here on this diagram -- may I ask a question,
20 Your Honor?

21 THE COURT: Well, really shouldn't, no.

22 Q BY MR. REMAKLUS: Would you like to move the
23 miniature car? Would that be helpful, Officer Maxwell?

24 A I'm not sure that I'm supposed to testify to these.

25 Q All right.

1 MR. ROBINSON: Your Honor, may the record show that
2 this is admitted and I believe full explanation can be made
3 by Officer Maxwell.

4 Q BY MR. REMAKLUS: You tell what you have on there
5 and what it signifies.

6 A Right. There was a large piece of asphalt located
7 11.6 feet from this post (indicating) or 11 and a half feet.

8 At 12.8 feet -- 12 feet eight inches we located
9 what appeared to be blood in the gravel; again at 18 feet
10 seven inches we located a large, what appeared to be blood.

11 At 20 feet located plastic fragments that
12 appeared to have come from a dome lamp from a vehicle.

13 At 22 feet we located more glass and plastic
14 fragments.

15 Again, at 24 feet we located more blood and that
16 -- at a point of 37 feet onto the direction of the bodies
17 there were visible signs of drag marks. They went off into
18 a similar to a "V" from --

19 Q Now, Officer Maxwell, what is the character of the
20 road surface there on State Highway 55?

21 A State Highway 55 is asphalt.

22 Q And what is the characteristic of the surface of
23 the ground where you made your measurements and of the
24 references to plastic and blood and so on that you've just
25 pointed out?

1 A. This is a graveled area, it has what's commonly
2 known as Pea Gravel covering nearly the entire area.

3 Q. And did you observe any what appeared to be
4 dark marks there, did you say?

5 A. Yes.

6 Q. And where would you say they were?

7 A. They started at a point at 37 feet four inches
8 from the location of this post (indicating) and in a "V" to
9 the location of the bodies.

10 Q. They split there at that point, would you say?

11 A. Yes, they did.

12 MR. REMAKLUS: All right, if you'd like to return to
13 your seat up here. Just move that back over to the side.

14 Q. BY MR. REMAKLUS: Officer Maxwell, handing you
15 what's been marked for identification as State's Exhibit 1-L,
16 can you tell me what it is, please?

17 A. These are part of the drag marks within the
18 location.

19 Q. Is that a photograph?

20 A. Yes, it is.

21 Q. And were you present when it was taken?

22 A. Yes.

23 Q. And where -- when was it taken?

24 A. It was taken on November the 5th, 1974.

25 Q. And whereabouts?

1 A. At the location described on the diagram, south of
2 Donnelly, Idaho.

3 Q. Referring back to the diagram real briefly, then,
4 if the left of the diagram is north and the City of Donnelly
5 would be about a mile beyond there; is that correct?

6 A. That's correct.

7 Q. What does -- is that the -- a true representation
8 of the scene as it appeared on the day that that picture was
9 taken?

10 A. Yes, it is. This is myself in the picture.

11 Q. Um-hmm. And was that taken in the vicinity of
12 the two bodies that were found?

13 A. Yes, it is.

14 MR. REMAKLUS: I would offer --

15 MR. ROBINSON: No objection.

16 THE COURT: 1-L will be admitted.

17 (State's Exhibit 1-L, a previously marked
18 exhibit, was admitted into evidence.)

19 Q. BY MR. REMAKLUS: Handing you what is 1-M, would
20 you tell us what that is?

21 A. 1-M is a visible picture of the drag marks at the
22 scene.

23 Q. And when was that picture taken?

24 A. It was taken November 5th, 1974.

25 Q. Were you present?

1 A. Yes, I was.
2 Q. Is that a true representation of the scene?
3 A. Yes, it is.
4 Q. If this is admitted in evidence, can you relate this
5 to your diagram?
6 A. Yes, I can.
7 MR. REMAKLUS: I would offer State's 1-M.
8 MR. ROBINSON: No objection.
9 THE COURT: 1-M will be admitted.
10 (State's Exhibit 1-M, a previously marked
11 exhibit, was admitted into evidence.)
12 Q. BY MR. REMAKLUS: Would you take 1-L and tell us
13 what it is -- what it disclosed to you on that day?
14 A. It showed a clearly visible path where the victims
15 were drug in the gravel.
16 Q. And 1-M, what does it show?
17 A. It also shows clearly visible path pointing in a
18 westerly direction from Highway 55.
19 Q. Do either of those show the "V" that you have
20 referred to?
21 A. Yes, they do.
22 Q. And could you relate the "V" to your diagram
23 here, then?
24 A. Yes. The "V" would start at a point of 37 feet,
25 I forget the inches, from the post that we used as a permanent

1 reference point.

2 Q Would it be accurate if I were to ask you if the
3 marks that you've described on 1-M or 1-L were -- appeared to
4 be one mark traversing from the -- about the middle, center
5 of the diagram towards the bottom, and then, that the "V" then
6 split and went in different directions from this point?

7 A Yes, it would.

8 Q And did you follow out those "V" marks in the
9 gravel?

10 A Yes, I did.

11 Q And do you know where they led to?

12 A They led to the bodies of both victims.

13 Q Would you explain to the jury what you did there
14 at the scene one mile south of Donnelly on this night in
15 question?

16 A After arriving at the scene I waited for
17 approximately three or four minutes for Sheriff Lynskey to
18 arrive before attempting any investigation, immediately
19 cleared everyone from the area of the scene. There was several
20 people present when the Sheriff arrived. We immediately went
21 to the location of the bodies and attempted to identify them;
22 also to gather any physical evidence that would be possible
23 as it was starting to get dark.

24 At a little bit later as -- after we cleared
25 everyone, also put in a request for Prosecutor Remaklus and

1 our County Coroner, Mr. Burton Walker. I requested their
2 presence at the scene.

3 Mr. Remaklus arrived and shortly thereafter
4 Mr. Walker arrived and, along about that time the State
5 Investigator, Wesley Woodall, arrived to assist on and completing
6 the investigation at the scene.

7 At that time we started making up this diagram,
8 taking our pictures and gathering any other physical evidence.
9 We had the entire area all roped off prior to this and kept
10 everyone clear.

11 Q And how long were you at the scene that evening,
12 Officer?

13 A I was in that general area up until nearly
14 midnight.

15 Q And, then, did you leave the scene about midnight?

16 A Yes, I did.

17 Q And what was the condition of the scene when you
18 departed that night?

19 A The scene was secured by another one of our
20 deputies from the Valley County Sheriff's office, Brian Miller.
21 He stayed through the night to keep everyone clear of the area.

22 MR. REMAKLUS: May I request of the assistance of the
23 witness here at counsel table a minute?

24 THE COURT: Yes, you may step down.

25 MR. REMAKLUS: Thank you.

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(Brief delay.)

Q BY MR. REMAKLUS: Officer Maxwell, handing you what has been admitted into evidence as State's Exhibit 4, would you identify the Exhibit for me, please?

A Yes. That is a sleeping bag that was taken into evidence at the location of the scene south of Donnelly.

Q Did you take it into possession that night?

A Yes, I did.

Q And what did you do with it?

A Bagged these items up as evidence and tagged them.

Q And then what?

A And locked them within the Sheriff's vault for safekeeping.

Q And handing you what's been admitted into evidence as State's 5, can you tell me what it is, please.

A Yes. That's a plaid-type blanket that was located at the scene also.

Q Was that covering one of the bodies?

A That's correct.

Q And handing you what's been marked, now, for identification as State's Exhibit 7, would you tell me what it is, please?

A These are plastic fragments that were located at the scene at the position of the first location that I have marked on that diagram that were from the dome light.

1 Q Now, with reference to the diagram, could you --
2 it may be necessary for you to approach the Exhibit to show
3 where you found the fragments.

4 A Yes.

5 Q Would you do so, please?

6 A These were located at this position here
7 (indicating) at a point 20 feet from our reference point of
8 the post.

9 Q And is it marked on there?

10 A Yes, it is.

11 Q And what does it say?

12 A It says "20 feet" and "plastic".

13 Q And that's where you got those items?

14 A Yes.

15 MR. REMAKLUS: Would you resume your seat, please.

16 Q BY MR. REMAKLUS: And, then, did you take the
17 Exhibit into your possession that night?

18 A Yes, I did.

19 Q And what did you do with it, if anything?

20 A Bagged it and it was marked as evidence by
21 Wesley Woodall.

22 Q And -- okay, thank you. Mr. Maxwell, I'm going
23 to ask you if you are familiar with what's been marked as --
24 for identification as State's Exhibit No. 6?

25 A Yes, I am.

1 Q And would you tell us what it is and where you got
2 it?

3 A It's a large piece of asphalt, it was located in
4 the shape and form that it is right now; within the turn-out
5 area at a point -- I can't read my diagram from here.

6 Q But, is it marked on your diagram?

7 A Yes, it is.

8 Q Is it marked "11.6 inches, rock"?

9 A Yes, I believe.

10 Q And did you take it into your possession that
11 night?

12 A Yes, I did.

13 Q And did you -- would you inspect the tag. Was it
14 marked with any other marking that night?

15 A Yes, it was. It had initials over in this area
16 here (indicating).

17 Q They don't appear to be visible now. Has that
18 been in the custody of the Sheriff's office ever since?

19 A Yes, it has.

20 Q Mr. Maxwell, would you tell us why you picked up
21 the piece of asphalt that night?

22 A I believe at the time this large piece of asphalt
23 was what caused the large bruise on the back of Mr. Bradford.
24 There was a large bruise plainly visible.

25 MR. REMAKLUS: I would offer State's No. 6, Your Honor.

1 MR. ROBINSON: May I ask a couple questions in aid of
2 objection, Your Honor?

3 THE COURT: Yes.

4
5 VOIR DIRE EXAMINATION

6 BY MR. ROBINSON:

7 Q Officer Maxwell, you stated that it was your
8 feeling this rock caused bruises on the body of Bradford; is
9 that the way I heard you?

10 A Yes.

11 Q Now, are you referring to the body being drug
12 across this rock, or this rock being picked up in some manner?

13 A As the body being pulled out on top of the rock
14 and causing a large mark or bruise.

15 Q And that's the bruise mark that you have seen in
16 the photograph on the back of John Wayne Bradford; is that
17 what you are referring to?

18 A Yes.

19 MR. ROBINSON: I have no objection, Your Honor.

20 THE COURT: All right, six will be admitted.

21 (State's Exhibit No. 6, a previously marked
22 exhibit, admitted into evidence.)
23
24
25

DIRECT EXAMINATION (Continued)

BY MR. REMAKLUS:

Q Officer Maxwell, on the day that we have been discussing did you have occasion to investigate a report of an abandoned vehicle?

A. Yes, I did.

Q And from whom did you get the report?

A. From our dispatcher in Cascade.

Q And do you have the logs to show from whom the dispatcher got the report?

A. Yes, I do.

Q And have you looked back at them?

A. Yes, I have.

Q Do you know who turned in the report to the Sheriff's office?

A. Yes, I do.

Q And who was that?

A. It was Steve Hager. He's a State Highway Department employee.

Q Now, Officer Maxwell, do you know about when you received the report?

A. At approximately 1:30 p.m.

Q And, so, then, it would have come into the Sheriff's office before that; is this correct?

A. Yes.

1 Q Now, what, if anything, did you do as a result of
2 that report?

3 A I went to the location of the vehicle.

4 Q And where was that?

5 A That was south of Cascade on Highway 55, approximately
6 18 miles.

7 Q And was there an abandoned vehicle there?

8 A Yes, there was.

9 Q Handing you what's been marked for identification
10 as State's 28-A, could you tell me what it is, please.

11 A This is a Polaroid photo that I took of the
12 vehicle. It's a 1956 Buick 4-door with Colorado license on it.

13 Q Is that a correct representation or accurate
14 representation of the automobile as it was when you first saw
15 it on that day?

16 A Yes, it is.

17 MR. ROBINSON: No objection, Your Honor.

18 THE COURT: 28-A will be admitted.

19 (State's Exhibit 28-A, a previously marked
20 exhibit, admitted into evidence.)

21 Q BY MR. REMAKLUS: What kind of a car is that,
22 Officer Maxwell?

23 A That's a 1956 Buick, 4-door.

24 MR. REMAKLUS: Did you want to see it, Your Honor?

25 THE COURT: No.

1 Q BY MR. REMAKLUS: Did you -- was there anyone
2 else along at that time with you?

3 A Not at that particular time, no.

4 Q And what, if anything, did you do with reference
5 to this vehicle?

6 A Attempted to identify ownership of the vehicle,
7 looked into the interior of it.

8 Q And you made an inspection of the vehicle?

9 A Yes, I did.

10 Q And would you describe what you saw?

11 A First thing I noticed on looking inside were
12 several papers in the driver's position on the left, laying
13 on the seat; also what appeared to be blood smears on the
14 steering column, the steering wheel and a large amount of
15 blood on the left door panel.

16 Q And did you find anything in the vehicle?

17 A Yes, I did.

18 Q And what was that?

19 A The papers I just mentioned, also a shell casing.

20 Q And did you remove anything from the vehicle?
21 At that time?

22 A Yes, I did.

23 Q What did you remove?

24 A The papers that I just mentioned.

25 Q Handing you what's been marked as State's No. 27,

1 could you tell us what it is, please.

2 A. These are papers that I removed from the vehicle
3 and used in helping to establish identity of the owner.

4 Q. And how do you know those to be those documents?

5 A. They are marked, there's a tag present in the
6 bag that I placed there at the time.

7 Q. And has the Exhibit been in the possession of the
8 Sheriff's office until it was removed up here for trial?

9 A. Yes, it was.

10 Q. Did you -- I notice there are a number of
11 documents in the bag. Did you remove all of those documents
12 from the vehicle?

13 A. Yes.

14 MR. REMAKLUS: I would offer State's 27.

15 MR. ROBINSON: May I have just a moment, Your Honor?

16 THE COURT: Yes.

17 (Brief delay.)

18 MR. ROBINSON: No objection, Your Honor.

19 THE COURT: 27 will be admitted.

20 (State's Exhibit No. 27, a previously marked
21 exhibit, admitted into evidence.)

22 Q. BY MR. REMAKLUS: Mr. Maxwell, what, if anything
23 did you then do with reference to this vehicle?

24 A. As soon as I found the shell casing and what I
25 believed at that time to be blood within the vehicle, I

1 contacted the Sheriff's office by radio and requested
2 Sheriff Lynskey's assistance in doing a more thorough
3 examination of the car.

4 Q Well, what did you do? Did you do anything with
5 the vehicle?

6 A Yes. The vehicle was taken to Cascade and
7 impounded.

8 Q And did you cause the vehicle to be moved to
9 Cascade?

10 A Yes.

11 Q And how was it moved?

12 A By wrecker.

13 Q And who moved it?

14 A Cascade Auto from Cascade.

15 Q And this was at your specific request?

16 A Yes.

17 Q And where did you impound the vehicle?

18 A It was taken first to the Sheriff's office and
19 approximately an hour later it was removed to another one of
20 our deputy's service station and garage that he had in
21 Cascade, and locked up.

22 Q And where was that?

23 A That was at Bud Reese's 66 in Cascade.

24 Q And did you have anything more to do with the
25 vehicle that day?

1 A. No, I did not.

2 Q. Now, if I understand the time sequence correctly,
3 Officer Maxwell, it was after this vehicle was brought in and
4 impounded that you were called up to the what I'll refer to
5 as the "crime scene", is that right?

6 A. That's correct.

7 Q. And when did you -- did you then do anything
8 further with reference to the vehicle?

9 A. Not on that date, no.

10 Q. When did you do something with reference to the
11 vehicle?

12 A. The following date; which would have been the
13 6th, Wesley Woodall and myself went through the vehicle again
14 after a State Lab technician had processed the car.

15 Q. Well, tell me what you did with reference to
16 the vehicle then before you and Wes Woodall went through it
17 again?

18 A. Well, we kept the vehicle locked up within the
19 garage and secured.

20 Q. And you mentioned a State -- a person with the
21 State. What did you do with reference to this car? Just
22 tell us. Did you ask somebody to look at it?

23 A. Yes, we did. We requested that a State Investigator
24 completely make a thorough search of the vehicle.

25 Q. Well, let me ask you this, Mr. Maxwell. Did a

1 State Investigator come to Cascade?

2 A Yes.

3 Q And who was that?

4 A That was Jerry Fletcher.

5 Q And is that a Miss or Mrs. Fletcher; do you know?

6 A I believe it's Mrs.

7 Q And did she make an examination of the vehicle?

8 A Yes, she did.

9 Q And where did that take place?

10 A That took place at Bud Reese's 66 service station.

11 Q Were you present?

12 A No, I wasn't.

13 Q Did you have -- did you have occasion to take any

14 photographs of the interior of that vehicle?

15 A Yes, I did.

16 Q And when was that done?

17 A That was done on the 6th.

18 Q And was that when Mrs. Fletcher was there?

19 A No.

20 Q Was that before or after she was there?

21 A That was after she had processed the vehicle.

22 Q And did you have occasion to be at the vehicle

23 when Mrs. Fletcher made any part of her examination thereof?

24 A No, I was not.

25 Q And did you have occasion to point out any objects

1 in the car to her?

2 A. I advised her of where an object was located by
3 telephone.

4 Q. And what object were you referring to?

5 A. .22 caliber shell casing.

6 Q. And did you see the shell casing in the vehicle?

7 A. Yes, I did.

8 Q. And where was it located?

9 A. It was on the right-front seat, approximately a
10 foot from the edge of the seat from the door.

11 Q. And when was this that you observed that?

12 A. I observed that at the location where the vehicle
13 was located first, also after we had removed it to the
14 service station for processing.

15 Q. Did you move or alter the position of the shell
16 casing in the vehicle?

17 A. No, I did not.

18 Q. What was the condition of the seat that it was on?

19 A. Between the top half and the bottom half of the
20 seat there appeared to be a large amount of blood. The seats
21 were a vinyl-type.

22 Q. And was -- and what, did this have anything to do
23 with the shell casing?

24 A. Yes, it did.

25 Q. Tell us about that, please.

1 A. When I put my weight on the seat, the top half
2 separated from the bottom half and the shell casing was stuck
3 in the blood at the location I just described.

4 Q. Was it visible without your putting your weight
5 on the front seat?

6 A. Not clearly. I could see a small portion only.

7 Q. So, it was stuck in there, is that it?

8 A. Yes.

9 Q. Handing you what's been marked for identification
10 as State's Exhibit 29-A, 29-B, 29-C and 29-D, I will ask you if
11 you would identify them, please. Are those photographs?

12 A. Yes, they are.

13 Q. Were you present when they were taken?

14 A. Yes.

15 Q. Do you know who took them?

16 A. Wesley Woodall.

17 Q. And what are they photographs of, Mr. Maxwell?

18 A. These are photographs of the interior of the 1956
19 Buick.

20 Q. Is that the one we've been discussing?

21 A. Yes.

22 Q. When were the photographs taken?

23 A. I can't recall the date. There were several
24 photographs taken by Mr. Woodall and myself.

25 Q. Um-hmm. Where was the vehicle located when those

1 pictures were taken that you have in your hand?

2 A. It was inside of Bud Reese's 66 station in Cascade.

3 Q. How long did you leave this vehicle there at
4 Bud Reese's 66 station, Mr. Maxwell?

5 A. I had it there four days.

6 Q. And it was taken, sometime during the four days, is
7 that right?

8 A. That's correct.

9 Q. Tell me, was it there continuously from the -- four
10 days from the time you had it put in there on, I think you said,
11 November 6th --

12 A. Yes --

13 Q. Wait a minute. When did you put it in there,
14 November 5th, I think?

15 A. Fifth.

16 Q. It was in there for the next four days, is that
17 right?

18 A. Yes, it was.

19 Q. Are these photographs, 29-A, accurate representation
20 of the -- what it intends to portray at that time?

21 A. Yes.

22 Q. B, C and D also accurate representations of the
23 situation as it existed at that time?

24 A. Yes, they are.

25 Q. Mr. Maxwell, had any alterations been made to the

1 interior of the car from the time it was picked up until those
2 pictures were taken?

3 A. Not at that time, no.

4 Q To the best of your knowledge the interior of the
5 car was the same when these pictures were taken as they were
6 when you first saw it down on the highway?

7 A. Yes.

8 MR. REMAKLUS: I would offer State's 29-A, B, C and D.

9 MR. ROBINSON: No objection, Your Honor.

10 THE COURT: 29-A, B, C and D will be admitted.

11 (State's Exhibits 29-A, 29-B, 29-C and 29-D,
12 previously marked exhibits, were admitted into evidence.)

13 MR. REMAKLUS: Did you care to see the exhibits,
14 Your Honor?

15 THE COURT: No, go ahead.

16 Q BY MR. REMAKLUS: Handing you Exhibit 29-D,
17 Officer Maxwell, would you tell us what the stains that appear
18 thereon, there on the side of the car, appear to be?

19 A. Yes. The stains on the left-front arm rest are
20 what I believed at that time to be blood stains and later
21 proved to be.

22 Q And 29-C, tell us what that portrays?

23 A. 29-C shows the dome light which I later removed
24 and the fragments came from this dome light.

25 Q What side of the vehicle was this on?

1 A. That was on the left-front -- no, these are located
2 centrally, above the front and rear doors above the doors.
3 Q. That is the door post right under the dome light?
4 A. Yes.
5 Q. Thank you. Mr. Maxwell, handing you what's been
6 marked for identification as State's 28-G, will you tell us what
7 that is, please?
8 A. This is the 1956 Buick that was owned by one of the
9 victims, Thomas Arnold.
10 Q. Did you take that picture?
11 A. Yes, I did.
12 Q. And when and where was it taken?
13 A. I took it at 11:45 p.m. on November the 7th, 1974.
14 Q. How do you know that to be the case?
15 A. I have it dated and the time also on the back, here
16 (indicating).
17 Q. Are these Polaroid shots?
18 A. Yes, it is.
19 Q. Is that an accurate portrayal of what it represents
20 as represented that day?
21 A. Yes, it does.
22 Q. Was that the condition of that vehicle from that
23 view as it was when you first saw it?
24 A. Yes.
25 MR. REMAKLUS: I'd offer 28-G.

1 MR. ROBINSON: No objection, Your Honor.

2 THE COURT: 28-G will be admitted.

3 (State's Exhibit 28-G, a previously marked exhibit,
4 admitted into evidence.)

5 Q BY MR. REMAKLUS: Where did you say that was taken?

6 A That was taken inside of Bud Reese's 66 station in
7 Cascade, Idaho.

8 Q 28-B, Officer Maxwell, is that a photograph that
9 was taken by you?

10 A Yes, it is.

11 Q And what does it -- when and where was it taken?

12 A This was taken in Bud Reese's 66 station. Shows the
13 interior floor of the vehicle. The picture was taken on
14 November the 7th, 1974 at a little after 11:45 p.m.

15 Q And 28-C --

16 A This picture was also taken at Bud Reese's 66
17 station on November the 7th, shortly after 11:45 p.m.
18 This shows the left-front door panel.

19 Q And here is State's 28-D, again, is that a photograph?

20 A Yes, it is. Now, this is the front seat from the
21 1956 Buick. It shows Officer Woodall leaning over and pointing
22 to a coagulated blood and shell casing after we disassembled the
23 seat.

24 Q And 28-E.

25 A This was also taken at Bud Reese's 66 station on

1 November the 7th, 1974. It shows the steering wheel and the
2 steering column with Investigator Woodall pointing toward blood
3 smears on the steering column and wheel.

4 Q And 28-F?

5 A This shows the exterior of the Buick, 1956 Buick,
6 taken on November the 7th inside of Bud Reese's 66 station.
7 It shows a blood smear on the right-rear door of the vehicle.

8 Q That was on the day the pictures were taken?

9 A Yes, they are.

10 MR. REMAKLUS: I would offer 28-B, C, D, E, F.

11 MR. ROBINSON: No objections, Your Honor.

12 THE COURT: 28-B through F, inclusive, will be admitted.

13 (State's Exhibits Nos. 28-B, 28-C, 28-D, 28-E and
14 28-F, being previously marked exhibits, were admitted into
15 evidence.)

16 MR. REMAKLUS: Your Honor, I have some additional
17 photographs that I would like to have marked at this time and
18 since we have had possible Exhibits marked before through
19 Exhibit 41, I would like to start these with 42 so we don't
20 get into inconsistent numbering.

21 THE COURT: Very well.

22 MR. REMAKLUS: That will be State's.

23 THE COURT: Do you have several there, Mr. Remaklus?

24 MR. REMAKLUS: Yes.

25 THE COURT: I think we'll take a recess and you can have

1 the Clerk mark them during the recess.

2 MR. REMAKLUS: Thank you, Your Honor.

3 THE COURT: We will take a ten-minute recess and if you
4 will remember the admonition, ladies and gentlemen, don't
5 discuss the case and keep your minds entirely open.

6 (Recess taken.)

7 (During recess State's Exhibits 42, 43, 44 and 45
8 were marked for identification.)

9 THE COURT: Let the record show the jurors are all
10 present.

11 MR. REMAKLUS: Would you mark that one 46, please.

12 (State's Exhibit No. 46 marked for identification.)

13 MR. ROBINSON: Your Honor, may I talk to Counsel just a
14 minute?

15 THE COURT: Yes.

16 (Brief delay.)

17 MR. ROBINSON: Thank you very much, Your Honor.

18 Q BY MR. REMAKLUS: Handing you what's been marked
19 for identification as State's Exhibit 42, 43, 44 and 45, would
20 you tell me what they are, please?

21 A Yes. These are photos of the 1956 Buick.

22 Q Do you know who took the pictures?

23 A Jerry Fletcher took these pictures.

24 Q Were you present when they were taken?

25 A On the one of the interior I was present. She had

1 taken these others just prior to that time.

2 Q And, so, you were there when No. 45 was taken?

3 A Yes.

4 Q Handing you what's been marked for identification
5 as Plaintiff's No. 46, could you tell us what it is, please?

6 A This is a .22 caliber long rifle shell casing,
7 Super "X" Brand.

8 Q Have you seen that before?

9 A Yes, I believe I have.

10 Q And where do you think you saw it before?

11 A This is the shell casing that I observed on the
12 front seat of the passenger side of the 1956 Buick.

13 Q And where was it located?

14 A It was located between the top and the bottom
15 halves of the seat, just barely visible, stuck in the coagulated
16 blood.

17 Q Thank you. Did you take it into possession out of
18 the vehicle?

19 A No, I did not.

20 Q When was the last time that you saw it in the vehicle,
21 Mr. Maxwell?

22 A Just prior to the time that Jerry Fletcher --

23 Q She examined the vehicle?

24 A Yes.

25 Q And when was that?

1 A. I can't recall the date.
2 Q. And where was her examination of the vehicle made?
3 A. In Bud Reese's 66 station in Cascade.
4 Q. Was that while you had the vehicle impounded?
5 A. Yes, it was.
6 Q. Mr. Maxwell, handing you what's been marked for
7 identification as State's Exhibit 30, would you tell us what
8 it is, please.
9 A. Yes. This is the dome light that I removed from
10 the 1956 Buick. Also I have my initials and date on this.
11 Q. And when did you remove that?
12 A. On November the 7th, 1974.
13 Q. Is this the same dome light that's portrayed in one
14 of the photographs we put into evidence?
15 A. Yes, it is.
16 Q. And what's the condition of it there?
17 A. The bulb is broken, there is white plastic that
18 the other items that have been entered into evidence fit
19 directly onto from the lens.
20 Q. Mr. Maxwell, did you make a comparison of the
21 dome light cover with State's Exhibit 7 that you have previously
22 identified?
23 A. Yes, I did.
24 Q. And what did you conclude?
25 A. These pieces fit directly onto the piece left in

1 the dome light.

2 Q And where did you get the pieces that you've
3 testified about before?

4 A At the scene where the bodies were located.

5 MR. REMAKLUS: Thank you, Mr. Maxwell. I would offer
6 State's 7 and 30, Your Honor.

7 MR. ROBINSON: No objection, Your Honor.

8 THE COURT: Thirty and seven will both be admitted.

9 (State's Exhibits 30 and 7, previously marked
10 exhibits, were admitted into evidence.)

11 MR. REMAKLUS: Inspect those and pass them along, please.

12 Q BY MR. REMAKLUS: Officer Maxwell, did you make any
13 other examinations of the vehicle while it was there in
14 Bud Reese's 66 station?

15 A Yes, I did.

16 Q And what did you do?

17 A Removed the seat and took it apart, the steering
18 wheel and checked for any further fingerprints or blood smears
19 on the back side of it, removed all the floor matting.

20 Q And what, if anything, did you find?

21 A Nothing of any significance.

22 Q Well, did you find blood in it?

23 A Yes, a large amount.

24 Q Did you find any fingerprints?

25 A None that we could get anything usable from, no.

1 Q But that -- is it fair to say they were smudged?
2 A Yes.
3 Q All right. Thank you.
4 Did you then have occasion to issue a bulletin for
5 the arrest of the defendant?
6 A I personally didn't, Investigator Woodall issued
7 the bulletin for the defendants.
8 Q And do you know where that was issued?
9 A From the Valley County Sheriff's office in
10 Cascade.
11 Q And did you help prepare the bulletin?
12 A Yes, I did.
13 Q And do you have a copy of that with you?
14 A Yes, I do.
15 Q And do you know what it says?
16 A Yes, I do.
17 Q In the bulletin did you describe anyone?
18 A Yes.
19 Q And what was the description that you put out?
20 MR. ROBINSON: Objection, Your Honor, no foundation for
21 this yet, or any description or identification.
22 MR. REMAKLUS: This will all be tied up, Your Honor.
23 THE COURT: All right, on the representation you will
24 connect it up, I'll overrule the objection.
25 MR. REMAKLUS: Thank you.

1 Q BY MR. REMAKLUS: What description did you put out?

2 A Description for a male, white male in his early
3 twenties, medium build, as I recall.

4 Another description for a young female wearing a
5 dark blue maxi coat, long blonde hair and I don't recall the
6 age we described on it.

7 Q Now, do you know who furnished that description
8 to the Sheriff's office?

9 A Yes, I do.

10 Q And who was that?

11 A Mr. Lester Kelly.

12 Q Does he reside at Cascade, Idaho?

13 A Yes, he does.

14 Q You are personally acquainted with him?

15 A Yes, I am.

16 Q Now, as a result of that bulletin being issued,
17 did you take any action there as a result of that?

18 A Yes, I did.

19 Q And what was that?

20 A I was notified by telephone from the Glens Ferry
21 Police Department that they had two persons in custody that fit
22 the description of our teletype that was issued.

23 Q And what, if anything, did you do then,
24 Officer Maxwell?

25 A I advised that Officer Woodall and myself would be

1 enroute as soon as possible for Mountain Home. They were
2 taken to the Mountain Home, or Elmore County Sheriff's office.

3 Q And did you go down there to the Elmore County
4 Sheriff's office?

5 A Yes, I did.

6 Q And where is Mountain Home? Would you locate it for
7 the jury?

8 A Mountain Home would be east of Boise, I don't
9 recall the highway number.

10 Q Is it on the freeway east of Boise?

11 A Yes, it is.

12 Q And did you and Officer Woodall go down there to
13 Mountain Home?

14 A Yes, we did. We traveled together.

15 Q And about when was that?

16 A That would have been, I believe, the 8th.

17 Q Of what month?

18 A Of November.

19 Q How did you travel?

20 A In my County patrol vehicle that's assigned to me.

21 Q Do you have any idea what time you arrived in
22 Mountain Home there at the Sheriff's office?

23 A At approximately 8:30, as near as I can recall.

24 Q And, what, in the morning?

25 A Yes.

1 Elmore County Detective.

2 Q Officer Maxwell, handing you State's Exhibits 22
3 and 23, first, would you check to see if that's loaded, please.

4 A It's clear.

5 Q Absolutely?

6 A Yes.

7 Q You want to put the clip back in part way, is all.
8 Would you describe -- tell what State's Exhibit 22
9 is?

10 A State's Exhibit 22 is a High Standard Sport King,
11 .22 caliber long rifle, commonly known as a .22 automatic
12 pistol.

13 Q And where did you first see that?

14 A I first saw this at the Elmore County Sheriff's
15 office in a Commissioners' meeting room on a table.

16 Q Is that one and the same weapon?

17 A Yes, it is.

18 Q And how do you determine that?

19 A I had initials placed on here and by the serial
20 number.

21 Q Are they there?

22 A The initials have been obliterated, they were put
23 on with a marking pencil.

24 Q Is there any other identification on that?

25 A Yes. I observed Mr. Freeman placing his initials

1 on the holster and also my report showing the serial number.
2 Q And what is the serial number?
3 A Serial number on this one is 366934.
4 Q And did you endorse that in your official report?
5 A Yes, I did.
6 Q Did you take that weapon into your possession at
7 that time, Officer Maxwell?
8 A Just shortly after we were there. The weapon was
9 kept locked in there all during our interrogation and all our
10 correspondence with the other officers at Mountain Home.
11 Q And how long were you at Mountain Home on that day?
12 A Several hours.
13 Q Now, did you gather that in before you went back
14 to Cascade?
15 A Yes, I did.
16 Q And from whom did you receive possession of that
17 weapon?
18 A From Elmore County Detective Jack Freeman.
19 Q Now, referring to Exhibit 23, what is that,
20 Officer?
21 A Exhibit 23 is a brown leather holster and the
22 brand name is "Made by Richard Sporting Goods." It's made for
23 the Sport King model .22 automatic.
24 Q Have you seen it before?
25 A Yes, I have.

1 Q And when was the first time you saw it?
2 A At Mountain Home.
3 Q Was that on the day that you have been talking about?
4 A Yes, it was.
5 Q Was the pistol in it then?
6 A No, the pistol was laying directly beside it on the
7 table.
8 Q And did this holster ever come into your possession?
9 A Yes, it did.
10 Q And when was that?
11 A At the same time and date that the pistol was
12 turned over to our department.
13 Q Officer Maxwell, handing you what has been marked
14 for identification as State's Exhibit 24, would you look at
15 it, please.
16 Have you seen it before?
17 A Yes, I have.
18 Q And what is that?
19 A It's a woman's dark blue maxi coat with a hood.
20 Q And where have you seen it before?
21 A At the Elmore County Sheriff's office in
22 Mountain Home.
23 Q And when was that, Officer?
24 A That was on November the 8th, 1974.
25 Q And whereabouts -- or was this with the other

1 objects?

2 A Yes, it was placed on a large table with the other
3 objects.

4 Q It was there with the pistol and the holster, is
5 that right?

6 A Yes.

7 Q Did you ever take that into possession?

8 A Yes, I did.

9 Q And tell us about that, please.

10 A That -- the maxi coat was taken into possession
11 at the same time and date as the weapon and the holster at
12 Mountain Home. I received them from Detective Jack Freeman of
13 the Elmore County Sheriff's office.

14 Q Officer Maxwell, handing you what's been marked for
15 identification as State's Exhibit 25, could you identify it
16 for us, please?

17 A Yes, I could. It's a large, woman's purse, black.
18 It was owned by Carol Spaulding.

19 Q Have you seen it before?

20 A Yes, I have.

21 Q When was the first time that you saw it?

22 A I saw it on November the 8th, 1974 at the
23 Mountain Home Sheriff's office in Elmore County.

24 Q Now, was that up in the Commissioners' room, or
25 was it in the Sheriff's office?

1 A. It was in the Commissioners' room.
2 Q. Is that in the same building as the Sheriff's
3 office?
4 A. That's correct, on the same table with the coat
5 and weapon.
6 Q. And did you ever take it into your possession?
7 A. Yes, I did.
8 Q. And when was that?
9 A. On November the 8th, 1974, also signed chain of
10 custody tags that are attached.
11 Q. Is that one and the same purse that you took into
12 possession that day?
13 A. Yes.
14 MR. REMAKLUS: Maybe I could set those over here
15 (indicating), Jim, some way.
16 Q. BY MR. REMAKLUS: Officer Maxwell, handing you
17 what's been marked for identification as State's Exhibit 25-A,
18 could you tell us what they are, please.
19 A. These are .22 caliber Winchester long rifle shells.
20 Q. Have you seen them before today?
21 A. Yes, I have.
22 Q. When was the first time that you saw them?
23 A. At the Elmore County Sheriff's office in the
24 Commissioners' room, along with the other items on the table.
25 These were in Carol Spaulding's purse which was open at the time.

1 Q And is this the purse, Exhibit 25, is this the bag
2 that shells were in?

3 A Yes.

4 Q And did you observe them in that bag on that date?

5 A Yes, I did.

6 Q Did you ever take those into your possession?

7 A Yes, I did.

8 Q And when was that?

9 A On November the 8th, 1974.

10 Q Did you have occasion to take into your possession
11 any other objects that -- out of Mountain Home on that day?

12 A Yes. There were the rest of Carol Spaulding's
13 personal clothing, also Tom Creech's personal clothing and
14 articles from his pockets.

15 MR. REMAKLUS: May I have the assistance of the witness
16 for just a moment, please, Your Honor?

17 THE COURT: Yes, you may step down.

18 (Brief delay.)

19 Q BY MR. REMAKLUS: Now, Mr. Maxwell, you enumerated
20 some certain other things that you took into your possession
21 in Mountain Home on that date --

22 A Yes.

23 Q -- and is it your understanding that they are in
24 this bag in this box?

25 A Yes, they are.

1 Q I'm referring to a plastic bag, sealed. Did you
2 put the seal on there?

3 A Yes.

4 Q And when you took the contents of this bag into
5 your possession, where did you put the contents in this -- in
6 the outer bag? Where were you when you bagged it up?

7 A At the Elmore County Sheriff's office in the
8 Commissioners' room. These were all removed from the table and
9 placed into bags.

10 Q And was someone there with you at that time?

11 A Yes, Mr. Woodall and Detective Jack Freeman, the
12 Elmore County Sheriff's office.

13 These items have been opened and examined by the
14 FBI Laboratory.

15 Q Did you send them to the lab?

16 A Yes, I did.

17 Q Officer Maxwell, would you open the plastic bag,
18 please?

19 A (Witness complied.)

20 Q Just a moment. Would you look in the -- are there
21 slips in the box?

22 A Yes, there are.

23 Q Would you remove the slips and see if they have
24 what we refer to as "Q" numbers.

25 A Yes, on the face of them.

1 Q Okay.

2 MR. REMAKLUS: Your Honor, Counsel has stipulated that
3 the contents of the bag may be identified, or offered into
4 evidence as one exhibit with the -- a breakdown thereof
5 corresponding with the "Q" numbers appearing on the tags.
6 That would have to be marked.

7 THE CLERK: Forty-six is the last number.

8 MR. REMAKLUS: Did we use 46?

9 THE CLERK: Um-hmm.

10 MR. REMAKLUS: This will be marked as Exhibit No. 47,
11 State's Exhibit No. 47 as further identified by the "Q" numbers
12 which the FBI will use.

13 MR. ROBINSON: It's my understanding, Your Honor, that
14 this box contains Q-25 through 29, 30 and 31.

15 THE COURT: Q-25 through 29?

16 MR. ROBINSON: Through 29 and 30 and 31.

17 THE COURT: Thirty and 31?

18 MR. REMAKLUS: Yes, Your Honor.

19 THE COURT: That will be the breakdown of the individual
20 items?

21 MR. REMAKLUS: Yes.

22 THE COURT: The entire box with all of the items is
23 Exhibit 47?

24 MR. REMAKLUS: Yes, Your Honor.

25 MR. ROBINSON: Right, if offered, Your Honor, we would

1 not have an objection.

2 MR. REMAKLUS: We would offer State's 47, Your Honor.

3 MR. ROBINSON: No objection, Your Honor.

4 THE COURT: Forty-seven will be admitted.

5 (State's Exhibit No. 47 marked for identification
6 and admitted into evidence.)

7 Q BY MR. REMAKLUS: Mr. Maxwell, handing you what's
8 been marked State's Exhibit 41, have you seen the envelope
9 before?

10 A Yes, I have.

11 Q And where did you first see the envelope?

12 A At the Elmore County Sheriff's office, located in
13 the Commissioners' room on a large table.

14 Q And there are contents in the bag, now, aren't they --

15 A Yes.

16 Q -- the envelope? Was it opened at that time when
17 you first saw it?

18 A Yes, it was.

19 Q And what did it contain when you first saw it?

20 A There were ten, .22 caliber long rifle shells
21 laying on the table by the partially opened bag, or envelope.

22 Q And were you present when they were put into the
23 bag?

24 A Yes, I was.

25 Q And who put them in?

1 A. Jack Freeman, Elmore County Deputy, Sheriff's
2 Detective.

3 Q And was the bag then sealed?

4 A. Yes, it was.

5 Q And what, if anything, did you do with it?
6 Did you take it into your possession?

7 A. Took it into my possession and took it back to
8 Cascade to be sent off as evidence for examination.

9 Q Officer Maxwell, did you take into your possession
10 at Mountain Home on that date, anything else that we have not
11 produced here?

12 A. I can't recall if I did or not. Everything was
13 with our evidence boxes.

14 Q Did you talk to the defendant in Mountain Home on
15 that day?

16 A. Yes, I did, just briefly.

17 Q Where was that?

18 A. At the Mountain Home Police Department.

19 Q And is that one and the same person as
20 Thomas E. Creech seated at counsel table with Mr. Robinson?

21 A. Yes.

22 Q Did you transport Miss Spaulding and the defendant
23 from Cascade to -- or from Mountain Home to Cascade on that
24 day?

25 A. I was present when they were being transported,

1 yes.

2 Q And how were they transported?

3 A They were transported to Cascade, Valley County,
4 in my County patrol car.

5 Q That is one that you drove down there with
6 Wes Woodall?

7 A Yes.

8 Q When did you bring these items that we've been
9 discussing? Did you bring them back to Cascade on the same day?

10 A Yes, we did.

11 Q How did you transport these items?

12 A Those items were all locked in the trunk
13 compartment of the patrol vehicle.

14 Q Now, so there's no misunderstanding, I'm referring
15 to Exhibit 22 and 23; which are the pistol and the holster.
16 Did you bring them back to Cascade that day?

17 A Yes.

18 Q And Exhibit 24; which is the maxi coat, did you
19 move it back to Cascade on that day?

20 A Yes.

21 Q Exhibit -- the black bag here; which is Exhibit 25,
22 did you transport it to Cascade on that day?

23 A Yes.

24 Q And Exhibit 41, did you bring that envelope and
25 its contents back to Cascade on that day?

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A. Yes.

Q. Now, referring to Exhibit 47; which consists of "Q" numbers 25 through 29, Q-30 and Q-31, were all of these items returned from Mountain Home to Cascade by you on that day?

A. Yes, they were.

Q. I wish you would describe for us the manner in which the defendant and Miss Spaulding were transported to Cascade from Mountain Home on this day in question.

A. Wes Woodall was driving my patrol vehicle, Miss Spaulding was in the right-front passenger portion, State Investigator Bud Mason was in the left-rear passenger portion, Defendant Tom Creech was in the center-rear and I was on the right-rear passenger portion.

Q. And about when did you leave Mountain Home?

A. It was late in the evening, I can't recall the exact time. We arrived at Cascade around 9:30, as near as I can recall.

Q. Did you go to court with these defendants in Mountain Home before you came back to Cascade?

A. Yes. I did not with Mr. Creech, I did with Miss Spaulding.

Q. Do you know whether or not this defendant appeared in court at Mountain Home on that day?

A. To the best of my knowledge he did.

1 Q Did you have any conversation with defendant
2 Tom Creech while he was being transported from Mountain Home
3 to Cascade on, what, November 8th?

4 A Yes, there was some conversation.

5 Q Did you -- who was present?

6 A Tom Creech, myself, Investigator Woodall,
7 Investigator Mason and Carol Spaulding.

8 Q These are the people in the car?

9 A That's correct.

10 Q And could you tell me now what you said to him
11 and what he said to you?

12 THE COURT: Just a minute, we'll take the matter up
13 out of the presence of the jury for a minute.

14 Ladies and gentlemen, we'll excuse you for just a
15 minute. If you will remember the admonition during this
16 recess, don't discuss the case and keep your minds open.

17 (Jury left the courtroom.)

18 THE COURT: I think I understand the situation here,
19 but I want to clarify with Counsel and make sure we're all
20 in agreement as to what the situation is.

21 Of course, the defendant is entitled to a
22 Jackson -v- Deno-type hearing out of the jury's presence as
23 to the voluntariness of any statement as to the statement
24 before it's offered.

25 Are you satisfied, Mr. Robinson, that the Motion

1 to Suppress that we heard, evidentiary hearing on the
2 Motion to Suppress, satisfies that type of hearing and that
3 this is -- was part of the subject of that Motion to Suppress?

4 MR. ROBINSON: Your Honor, assuming that and I am also
5 assuming that Counsel is not laying open a broad question that
6 encroaches upon this Court's order regarding the Motions In
7 Limine. This is a broad question that he asked, and I was
8 tuned in to come off this chair in the event we started going
9 into some testimony in conversation that was outside of the
10 scope of what the Court has limited.

11 But, I am satisfied the conversations that may be
12 testified to here were covered within the scope of our
13 Motion for Suppression. If Counsel is leading into something
14 different than that, of course, I'm going to be making an
15 objection and drowning out the voice of the witness.

16 THE COURT: It's a little ambiguous, the situation,
17 because the Motion to Suppress was specifically directed at a
18 written statement and not oral statements and I appreciate
19 these oral statements followed chronologically after the
20 written statement, so we held a Motion to Suppress hearing
21 about -- and I would assume that at least the foundation that
22 was proved to have been laid for the oral statement at the
23 Motion to Suppress would also apply to these later statements,
24 is that an assumption you are working on?

25 MR. ROBINSON: That's the assumption I'm working on,

1 yes, Your Honor.

2 THE COURT: Well, I will find for the record at this
3 time that, based upon the foundation that was laid in the
4 evidentiary hearing on the Motion to Suppress filed by the
5 defendant that --

6 MR. REMAKLUS: Your Honor, may I approach the witness
7 very briefly and I may withdraw my question.

8 THE COURT: -- concerning Exhibit B, concerning what
9 we marked at the evidentiary hearing as Exhibit B, which was
10 admitted at that time, I would find that the defendant was
11 fully advised of his rights prior to giving that written
12 statement and also that advice would carry over to subsequent
13 oral statements on the -- at least to the extent to the
14 period when he was being transported from Elmore County to
15 Valley County and that those statements were voluntarily given
16 and competently given.

17 Now, this finding only goes to the extent, however,
18 of the statements that were revealed in that Motion to Suppress
19 hearing. If it goes outside of that, why, I think we'll have
20 to have a further hearing as to voluntariness and other
21 matters.

22 MR. REMAKLUS: Fine. Now, may I approach the witness
23 very briefly, because I may withdraw the question of this
24 witness.

25 THE COURT: Yes.

1 MR. REMAKLUS: We're going to be facing the same thing
2 with another witness anyway, Your Honor. Thank you.

3 THE COURT: I do want to advise Counsel further with
4 reference to any of these statements that were involved with
5 the foundation in the evidentiary hearing on the Motion to
6 Suppress; that under the United States Supreme Court
7 decision in Jackson versus Deno they left some options open
8 to the State as to which procedure would be followed; whether
9 the Court would make an independent ruling out of the
10 presence of the jury of the voluntariness of the statements
11 and, then, the same issue of voluntariness would be presented
12 to the jury to determine independently, or whether the rule
13 to be followed in the Court's ruling on voluntariness would
14 be conclusive on that issue. However, the full circumstances
15 of the conversation and surrounding circumstances could be
16 related to the jury for purposes in giving -- of then giving
17 whatever weight to the statement they wanted.

18 It's my understanding that our own Supreme Court,
19 in the Dillon case, adopting the latter procedure that the
20 Court makes the initial ruling on voluntariness, that makes
21 the statement admissible, however, the full circumstances
22 can then be related to the jury to aid the jury in determining
23 what weight they want to give to the statements, not to
24 determine voluntariness, though.

25 Does Counsel have any disagreement with that?

1 MR. ROBINSON: No. This is my understanding of it,
2 Your Honor.

3 THE COURT: In other words, my ruling as to
4 voluntariness would not preclude the defendant from laying the
5 full circumstances before the jury on cross-examination or
6 whatever way you want to go, to the weight to be given to
7 these statements, or are we all in agreement on that?

8 MR. ROBINSON: Yes, Your Honor.

9 MR. REMAKLUS: Yes, Your Honor.

10 MR. ROBINSON: Your Honor, before you call the jury
11 back in I'd like the record first of all to show that on this
12 voluntary statement I have not seen a copy of that; which has
13 been revised in the form that the Court's order on the
14 Motion to Suppress have deleting. Now, I also want the
15 record --

16 THE COURT: That statement hasn't been offered yet
17 so I haven't seen it either.

18 MR. ROBINSON: All right, Your Honor.

19 Also, I'd like the Court to realize that
20 Exhibits 42 through 46 have not, prior to their being shown
21 here in court, have not been seen by me in spite of this
22 Court's discovery order and pretrial conferences.

23 THE COURT: All right. Are you ready to proceed, then?

24 MR. REMAKLUS: Yes, Your Honor.

25 THE COURT: I take it, Mr. Robinson, then, for the

1 record, you don't have any objection as far as not having an
2 out-of-jury hearing on voluntariness unless they go outside
3 of the scope of the matters covered in the Motion to Suppress,
4 is that right?

5 MR. ROBINSON: That's right, Your Honor.

6 THE COURT: All right.

7 MR. REMAKLUS: Do you want to hear the testimony at
8 this time before we call the jury back in?

9 THE COURT: Perhaps we should. That might avoid any
10 difficulty, yes.

11 MR. REMAKLUS: Yes.

12 Q BY MR. REMAKLUS: Mr. Maxwell, did the defendant
13 make a statement to you coming home from Mountain Home to
14 Cascade that night?

15 A Yes. The majority of any talk on the way and
16 statements Mr. Creech was concerned on what would happen when
17 we arrived back at Cascade and also, as we passed mile post 94,
18 south of -- or just south of the location where the vehicle
19 was, he did state that that's where he left the car.

20 Further up the road at Cougar Mountain Lodge he
21 also stated again that they had spent the night. That was,
22 basically, the extent of -- other than just small talk on the
23 way back to our office.

24 Q Did he -- you say he left the car? What car? Do
25 you have any way of knowing what car he meant?

1 A. No, I didn't ask that. He just said "That's where
2 the car ran out of gas" and I don't recall if it was right at
3 that time or later that he stated he attempted to coast on
4 into the river.

5 MR. REMAKLUS: That's the questioning, Your Honor.

6 THE COURT: Are you satisfied that comes within the
7 scope of the Motion to Suppress?

8 MR. ROBINSON: Yes, Your Honor, and this was
9 conversation that we had testimony on, I believe, last Friday.

10 THE COURT: Yes, I'll -- except the last item, I think,
11 about rolling in the river, I don't remember that. Maybe it
12 was covered --

13 MR. REMAKLUS: I don't know.

14 THE COURT: -- but, the voluntariness issue at least
15 was covered --

16 MR. ROBINSON: Yes.

17 THE COURT: -- last Friday.

18 MR. ROBINSON: Yes, sir.

19 THE COURT: I think maybe we'll just take a little
20 break now before we bring the jury back so then we'll go
21 without a further recess until later.

22 (Recess taken.)

23 THE COURT: Let the record show the jurors are all
24 present.

25 Go ahead.

1 MR. REMAKLUS: Thank you, Your Honor.

2

3 DIRECT EXAMINATION (Continued)

4 BY MR. REMAKLUS:

5 Q Officer Maxwell, I'd ask you if you had any
6 conversations with the defendant while you were in the
7 Sheriff's patrol car, you know, coming back from Cascade on
8 November 8th. I think that you had conversations with him?

9 A Yes.

10 Q Now, would you tell us what he said to you on that
11 evening?

12 A Mr. Creech was concerned about what would happen
13 to him after we arrived at Cascade and also pointed out a
14 location along the route near mile post 94 of, as near as I
15 can recall his words, "That's where we left the car."

16 A little further on up the road at the Cougar
17 Mountain Lodge Mr. Creech stated that they had spent the night
18 there. Other than that the majority of the conversation was
19 just small talk.

20 Q And is that near mile post 94 where you found the
21 Buick?

22 A Yes, just north of mile post 94. I don't recall
23 how many feet it was, but it was right close to mile post 94.

24 Q And then, as you were traveling back up from
25 Mountain Home to Cascade, you had passed mile post 94 before

1 you got to Cougar Mountain Lodge; wouldn't you?

2 A. Yes.

3 Q And about how far was that, Officer?

4 A. From Cougar Mountain Lodge?

5 Q Yeah, the mile post and Cougar Mountain Lodge.
6 How far would that be?

7 A. Be approximately five miles.

8 Q Now, so that there's no confusion in the minds of
9 the jury, Cougar Mountain Lodge is between Cascade and mile
10 post 94?

11 A. Yes, it is.

12 Q Um-hmm. Officer Maxwell, I want to return when
13 you were in Mountain Home on that day and, during the
14 confusion with the large number of exhibits, I overlooked
15 State's Exhibit 25-A that you had previously identified; had
16 you not?

17 A. Yes.

18 Q Was that down at Mountain Home when you got there
19 that day?

20 A. Yes, it was.

21 Q Did you take those .22 shells into your possession
22 on that day?

23 A. Yes, I did.

24 Q Did you transport them back to Cascade along
25 with these other items at the same time you brought -- that

1 Tom Creech and Miss Spaulding back to Cascade?

2 A. Yes.

3 Q. Fine. Thank you.

4 Now, if I can keep all of these things straight,
5 what I asked you, Officer Maxwell, is, what, if anything, did
6 you do with all of the objects that you brought from
7 Mountain Home to Cascade on November 8th?

8 A. After arriving at the Sheriff's office in
9 Cascade all the items were taken into the Sheriff's office,
10 evidence vault, and placed, while we were taking Mr. Creech
11 for his court process in Cascade.

12 Q. Then what, if anything, did you do with these
13 things?

14 A. I removed the items to my own office and started
15 labeling and tagging them.

16 Q. Okay. Then, finally, what did you do with them?
17 Did you do anything else with these things, Mr. Maxwell?

18 A. Yes, took the items back to Boise with me to
19 Investigator Mason's office at the State Bureau and we wrapped
20 this evidence and other items to be sent to the FBI Laboratory
21 in Washington, D.C.

22 Q. Now, what other items at that point are involved
23 when you got there to Boise?

24 A. The clothing from the victims, also some bullets
25 that Sheriff Lynskey had delivered to me as I was in charge of

1 taking care of the evidence.

2 Q Okay. Mr. Maxwell, would you -- well, maybe we
3 can do it better up here.

4 Would you inspect the contents of this box, or
5 just the bags. Do these have "Q" numbers on them?

6 A Yes, they do.

7 Q Did you put the "Q" numbers on them?

8 A No, I did not.

9 Q Let me ask you this: Did you put these -- the
10 contents of these bags in the -- did you put them in the bags?

11 A No, I didn't put them in the bags. They were
12 sealed in the bags by Bud Mason and, together, we boxed them
13 up for mailing to the FBI Laboratory. I did observe them
14 before they were placed in the bags.

15 Q Were you present when they were put in the bags?

16 A Yes.

17 Q Could you look and tell us what the "Q" numbers
18 are on these things and maybe we could handle these in the
19 same way we did this other.

20 MR. ROBINSON: I'd rather not open those plastic
21 bags.

22 Q BY MR. REMAKLUS: What do you understand the
23 contents of those bags to be?

24 A The contents of the bags are clothing from the
25 victims, John Wayne Bradford and Thomas Edward Arnold.

1 Q Okay. Let's see if we can locate some "Q" numbers
2 so we can identify them, Officer Maxwell.

3 A Well, the small white bag has Q-34 and Q-35.

4 Q Okay.

5 A The large bag has "Q" numbers, Q-36 to Q-41.

6 Q Is there any -- here we go.

7 A Another large bag has Q-42 to Q-49. That is the
8 total contents.

9 Q Is there anything else in there, Jim?

10 A No.

11 Q Okay. Did you mail that box to the FBI Lab?

12 A Yes, I did. I mailed all the evidence personally.

13 Q How can you tell that you mailed that box, then?

14 A The box is still -- has -- have my original
15 wrappings on them. I had them marked by number, also it has
16 my handwriting on the original wrappings. I'd have to turn it
17 around to show my original labels.

18 Q And are the labels still on there?

19 A Yes, they are.

20 Q And that's the address that you put on there?

21 A Yes.

22 Q And, now, these bags that are in there, are these
23 the contents of this box when you mailed it to the FBI?

24 A As near as I can recall, yes.

25 Q Now, when did you again see that box?

1 A. When it was returned from the FBI Laboratory and
2 we picked it up at the Post Office by registered mail in
3 Cascade.

4 Q. And how did you seal that box when you mailed it
5 to Washington?

6 A. I had the box sealed with tape and also with cord.

7 Q. How many boxes did you mail on that day,
8 Officer Maxwell?

9 A. I had four.

10 Q. Why don't -- I know we've removed some of the
11 contents but did you make a mailing in this box also?

12 A. Yes.

13 Q. Is this the third one of your boxes that you --

14 A. That would be Box No. 2 of four.

15 Q. Are these the same contents, this Q-25 through
16 Q-29, Q-30 and Q-31; are these the contents of this one you
17 mailed to the FBI?

18 A. Yes.

19 Q. Now, was that -- were all of these boxes sealed
20 by you with tape and signed?

21 A. Yes.

22 Q. Had you tied all of them with cord?

23 A. Yes, I had.

24 Q. Prepay the postage?

25 A. Yes, they were registered and insured.

1 Q And referring to box two of four, would you tell
2 me if that's the address you put on --

3 A Part of the address is covered up with an FBI tag
4 here and it appears to be the same one that I put on there.

5 Q And was this all intact, your wrapping, was that
6 wrapping covered again when you received it?

7 A Yes, it was.

8 Q Did you -- is this your other box, the fourth box?

9 A Yes, it is. The wrapping for this one is in that
10 other small box over there (indicating).

11 Q Now, explain what you mean by the "wrappings for
12 these smaller ones".

13 A The papers that were on this box when we removed
14 them, placed them here, also the rest of the wrapping is taped
15 onto the outside of this box. They all had the original
16 wrappings intact at the time that we received them back.

17 Q Do you know of your own knowledge, Mr. Maxwell,
18 that you mailed all four of these boxes to the FBI?

19 A Yes, I did.

20 Q And were they all sealed securely?

21 A Yes, they were.

22 Q And were they all returned with their original
23 wrappings intact?

24 A Yes, they were.

25 Q Thank you. Mr. Maxwell, what else, if anything,

1 was mailed to the FBI by you in any one of these four boxes,
2 other than the objects that we have discussed?

3 A The four bullets that were removed from the victims,
4 they were mailed at the same time in the smallest box to the
5 FBI Laboratory.

6 Q I'm going to try to refer to these bottles without
7 opening it. I'm handing you what's been marked for
8 identification -- oh, this is already opened, State's
9 Exhibits 10, 11, 12 and 13. Can you identify them, Mr. Maxwell?

10 A Yes, I can.

11 Q Please do so.

12 A These are bullets that Sheriff Lynskey personally
13 handed to me. They came from both the victims. They have my
14 initials and the date intact.

15 Q Have you initialed and dated each one of the four
16 bottles in there?

17 A Yes, I have. I was looking for --

18 Q The sack is open, you may remove the bottles.

19 Have you checked them all to know that you mailed
20 them personally?

21 A Yes, I checked them that I have the same ones that
22 I did mail.

23 Q And how did those come back into your possession,
24 Officer Maxwell?

25 A Through the mail with the same group of boxes one

1 to four. They were in the small box.

2 Q Thank you. Handing you which is marked Q-6,
3 Officer Maxwell, have you ever -- have you previously testified
4 as to that?

5 A Not to this one, no.

6 Q How about the Exhibit marked Q-5?

7 A Yes, this is the one I testified to.

8 Q Now, have you seen both of those exhibits before?

9 A Yes, I have.

10 Q Q-5 and Q-6?

11 A Yes.

12 Q Did you mail them to Washington, D.C.?

13 A Yes, I did.

14 Q And were they in one of the four boxes that you
15 have described?

16 A Yes, they were in the small box also.

17 Q Um-hmm. What is Q-5 and Q-6?

18 A Q-5 and Q-6 are fired .22 caliber, Super "X" Brand
19 shell casings.

20 Q You testified that you had seen No. 5 before; is
21 this correct?

22 A Yes.

23 MR. REMAKLUS: If I may be excused for one second,
24 Your Honor.

25 (Brief delay.)

1 MR. REMAKLUS: What's your last --

2 THE CLERK: Forty-seven.

3 MR. REMAKLUS: Would you --

4 THE CLERK: This is 46.

5 MR. REMAKLUS: Q-6, would you give it the next number
6 in sequence, put the number on the back, please.

7 (State's Exhibit No. 48 marked for identification.)

8 THE COURT: That's 48 that's marked?

9 MR. REMAKLUS: Yes, it is.

10 Let's -- we have Q-6 marked as State's Exhibit 48.

11 Q BY MR. REMAKLUS: Did that come back into your
12 possession with the other items from the FBI Lab?

13 A Yes, it did.

14 Q And the same way with Q-5; which has been marked
15 for identification as Plaintiff's Exhibit 46?

16 A Yes.

17 Q It came back from the FBI Lab?

18 A Yes, it did.

19 Q Upon the return of these items when you received
20 them in the mail, what did you do with them, Officer Maxwell?

21 A They were logged in the evidence vault at the
22 Sheriff's office and were opened in the presence of the Court
23 at Cascade.

24 Q The boxes were opened at the first trial?

25 A Yes, right. Mrs. Mary Hill was present, the boxes

1 were -- all the items were then resealed and Mrs. Mary Hill
2 dated and initialed the boxes along with myself.

3 Q And what did you do with them?

4 A Kept them locked in the evidence vault until last
5 Monday and -- excuse me, Monday before last, and then they were
6 brought up here to Wallace and placed in the evidence vault at
7 the Shoshone County Sheriff's office.

8 Q You say they were brought up? How were they
9 brought up?

10 A I brought them up personally in the vehicle that
11 I'm operating.

12 Q And then were the Exhibits opened across the
13 street?

14 A Yes, they were, in the presence of Mr. Creech's
15 attorney, Mr. Robinson.

16 Q Who else was present?

17 A Yourself, Mr. Thomas, my wife was present and
18 myself.

19 Q Was Mary Hill present?

20 A Yes, she was.

21 Q And she's the same lady that was the Clerk of the
22 Court in Cascade that marked these exhibits and sealed them up
23 down there?

24 A Yes, she was.

25 Q Thank you. And they were removed and brought over

1 here this morning; is this correct?

2 A. That's correct.

3 Q. Officer Maxwell, handing you what has been marked
4 for identification as State's Exhibit No. 26, could you
5 identify it for us, please?

6 A. Yes. These are .22 caliber long rifle shells,
7 Super "X" Brand.

8 Q. Where did you obtain them?

9 A. I got these from Mr. Bill Schreiber of Lewiston,
10 Idaho, on November 12th, 1974.

11 Q. And where have they been since coming into your
12 possession?

13 A. They've been locked in the evidence vault at
14 Valley County Sheriff's office, along with the other items.

15 Q. And were they transported up here by you?

16 A. Yes, they were.

17 Q. Was that Monday before last?

18 A. That's correct.

19 Q. All of our -- the items that we're discussing,
20 then, were brought up here by you on Monday, is that right?

21 A. Yes, directly to the Sheriff's office.

22 Q. Is the box the same as it was when you got them?

23 A. Yes, it is.

24 Q. And does that appear to be full?

25 A. It's partially empty.

1 MR. REMAKLUS: Yeah. I've got to look at my list of
2 Exhibits, Your Honor.

3 (Brief delay.)

4 Q BY MR. REMAKLUS: Officer Maxwell, handing you
5 what's been marked for identification as State's Exhibit 27-A,
6 can you tell me what it is, please.

7 A Yes. This is a yellow colored tablet commonly
8 referred to as a "legal pad". It's a letter to Joyce from
9 Wayne.

10 Q And have you seen it before today?

11 A Yes, I have.

12 Q Where have you seen that?

13 A I first saw this in the rear window of the 1956
14 Buick at the location described earlier, below Cougar Mountain
15 Lodge near mile post 94.

16 Q For clarification, is that where the car ran out
17 of gas?

18 A Yes.

19 Q The blue Buick, or blue and white Buick?

20 A Yes.

21 Q Thank you. That has been in your -- oh, have you
22 had it in the official custody ever since?

23 A Yes, I have, along with the other items.

24 Q Was that handled in the same way from the -- from
25 its inception as the other items? Did you take it in possession

1 and keep it in the evidence locker?

2 A. Yes, I did. I had it in a clear plastic zip-lock
3 bag.

4 Q. And did you -- was that presented at the first
5 trial of this matter?

6 A. Yes.

7 Q. That's when it was marked the way it is?

8 A. Yes, it was.

9 Q. And did you bring it up here with the other items
10 Monday before last?

11 A. Yes, I did.

12 MR. REMAKLUS: I'd offer 27-A.

13 MR. ROBINSON: No objection, Your Honor.

14 THE COURT: 27-A will be admitted.

15 (State's Exhibit No. 27-A, a previously marked
16 exhibit, admitted into evidence.)

17 MR. REMAKLUS: The jury can read this when they retire.
18 Did you care to see it, Your Honor?

19 THE COURT: No.

20 MR. REMAKLUS: Your Honor, I'm wondering, since we have
21 some other matters to take up in the absence of the jury, if
22 we might do that at this time. That will give me a chance to
23 review with Officer Maxwell -- I think I'm through with him
24 and, then, if there's anything else I could do it first thing
25 in the morning and then Mr. Robinson could -- would not be

1 interrupted in his cross-examination.

2 THE COURT: All right. We'll take our evening recess
3 at this time. I will just remind you again of the admonition,
4 ladies and gentlemen, don't discuss the case and keep your
5 minds entirely open at this point.

6 We'll be in recess until 9:30 tomorrow morning.

7 (Jury left the courtroom.)

8 THE COURT: Do you want to take those up now? We
9 discussed the procedure in chambers. Have you had a chance,
10 Mr. Robinson, to see the portions of these exhibits they are
11 going to offer and make what objections you might have to them?

12 MR. ROBINSON: I would imagine, if we were given ten
13 minutes I'll have it all clarified.

14 THE COURT: All right, fine.

15 (Brief recess taken.)

16 THE COURT: All right, I understand Counsel had a
17 transcript of a tape recording you wanted to present to the
18 Court with possible objections at this time by opposing Counsel,
19 is that right?

20 MR. ROBINSON: Yes, Your Honor.

21 MR. THOMAS: Your Honor, the transcript has been
22 submitted to the Court previously as an exhibit which was filed
23 as part of the State's pretrial brief in May; Exhibit A, which
24 was attached to that brief offered in support of the admission
25 of other crimes, evidence relating to convictions and

1 statements made by the defendant in the Ada County Sheriff's
2 office, and an interview on April 28, 1975.

3 The material -- or the portion of the tape which
4 we propose to edit and play to the jury begins on Page 48
5 starting the fifth line down from the top of the page; the
6 fifth line reading as follows:

7 "PALMER: Grangeville. You got a ride with a couple
8 of guys. What kind of a -- "

9 From there on through Page 49, the -- through
10 Line 9 at the top of Page 49, omitting Lines 10, 11, 12, 13,
11 14, 15, 16, 17, 18, 19 and 20 and proceeding on down Page 49
12 through the remainder of Page 49 and including all of Page 50
13 except the ninth line from the bottom to -- rather, the nine,
14 eight and seventh lines from the bottom, which read "Later on
15 it did, but you've killed quite a few people and you say is
16 that right?"

17 "CREECH: Yes."

18 We propose to leave those lines out. I've also
19 omitted several items, or several pieces of information
20 relating to vulgar behavior by the victims of this crime while
21 they were riding in the back -- or when they were riding in
22 the automobile. It is my understanding Mr. Robinson objects
23 to having that left out. Our position is simply that the
24 victims are not on trial here and their behavior is not
25 pertinent or relevant.

1 I should also mention to the Court as Mr. Remaklus
2 pointed out in the State's opening statement, there have been
3 three admissions, not all of them consistent, by the defendant.
4 The first one was involved in the voluntary statement with
5 respect to which the Court held a suppression hearing last
6 week.

7 The second is this statement which contains a
8 self defense-type of statement by the defendant as a
9 justification.

10 The third is an outright confession to the crime
11 and a statement that there was no reason for it.

12 It is our intention to offer all of those
13 statements to the jury on the theory that the defendant
14 initially attempted to justify the killings by two different
15 stories and finally told the truth in confessing there was no
16 reason for the killings; that they were premeditated.

17 That is the reason I point that out so the Court
18 will be fully aware of our theory.

19 THE COURT: All right, we've already considered the
20 original statement. The one we're talking about right now is
21 the second one. What's the situation on the third? Have you
22 seen that, Mr. Robinson?

23 MR. ROBINSON: I understand what it is, Your Honor,
24 there was no tape recording going on when the plane was in
25 trouble up there 14,000 feet.

1 THE COURT: Is that when the third one was given?

2 MR. ROBINSON: That's when there was supposed to be an
3 emission of some comment.

4 MR. REMAKLUS: It was after the plane crashed, after
5 they were back in the aircraft an hour or so after the crash
6 itself.

7 THE COURT: So, there's not a written statement, that's
8 an oral one?

9 MR. REMAKLUS: That's an oral statement.

10 MR. ROBINSON: Yes, sir.

11 THE COURT: Well, I don't have that brief with me here
12 if --

13 MR. ROBINSON: I don't have mine with me either,
14 Your Honor, and possibly before you take it may I point out
15 what additional I want as to line and page number?

16 THE COURT: Yes.

17 MR. THOMAS: You don't have yours?

18 MR. ROBINSON: It's in the office. It's parked ten
19 miles away.

20 THE COURT: Now, what are you going to mark? Are
21 there some things they want to leave in that you want out and
22 some things they want out you want in? What's the situation?

23 MR. ROBINSON: Well, I'm in agreement with their
24 area.

25 THE COURT: What are you going to be marking?

1 MR. ROBINSON: I've already got the mark on here,
2 Your Honor, it's Page 48 through the bottom -- 12 lines up
3 from the bottom.

4 THE COURT: How many?

5 MR. ROBINSON: Twelve; commencing with comments made
6 by Sheriff Palmer to the bottom of that page.

7 THE COURT: What do you want about that? You want that
8 in or out?

9 MR. ROBINSON: I want that and the rest of the Page 49.

10 THE COURT: In?

11 MR. ROBINSON: In.

12 MR. REMAKLUS: I'll be glad to lend you --

13 THE COURT: It would be helpful if I had a copy to
14 look at.

15 MR. REMAKLUS: I thought it would..

16 MR. ROBINSON: This one is already marked.

17 THE COURT: I'd have brought my copy but I didn't know
18 this was going to come up right now.

19 MR. REMAKLUS: This is part of that pretrial brief.

20 MR. THOMAS: Yes.

21 MR. REMAKLUS: Yeah, that's the one.

22 THE COURT: Now, you are omitting everything clear
23 over to Page 48? That's where we begin, is that right?

24 MR. THOMAS: That's correct, Your Honor. We do not
25 begin at the same place that Mr. Robinson would like to begin,

1 on Page 48, however.

2 THE COURT: All right. Do you have a copy before you,
3 Mr. Robinson?

4 MR. ROBINSON: No, I do not, Your Honor. I can step
5 over next to --

6 THE COURT: All right, as I understand, Page 48 the
7 State wants to begin with Line 5 --

8 MR. THOMAS: Line 6, I believe.

9 THE COURT: When Palmer says "Grangeville. You got -- "?

10 MR. THOMAS: Right, Line 7 that really is.

11 THE COURT: Now, do you object to starting there,
12 Mr. Robinson?

13 MR. ROBINSON: No, Your Honor, that includes what I
14 want in.

15 THE COURT: All right, so we're in agreement that they
16 can start on Page 48, Line 7, is that right?

17 MR. ROBINSON: Yes, Your Honor.

18 THE COURT: All right. They then want to go through
19 Page 49 to Line 9?

20 MR. ROBINSON: Yes and, then, that area that they
21 want to omit I would want in.

22 THE COURT: And they want to omit from Line 9 to
23 Line 20?

24 Yes, I'm going to allow that to be put in,
25 require that to be presented with the rest.

1 Okay, then, we're going to go on to Page -- all
2 of Page 50 except, what, seven, eight and nine from the --

3 MR. ROBINSON: No, this isn't numbered there. It's
4 the seventh line from the bottom.

5 THE COURT: All right.

6 MR. ROBINSON: With the answer "Creech, yes" and then
7 the question just before that posed by Palmer. I agree with
8 that deletion.

9 THE COURT: All right.

10 "PALMER: Did that make you sick?"

11 "CREECH: No."

12 "PALMER: It didn't bother you that much?"

13 "CREECH: Not right then it didn't, later on it did."

14 Now, that's where we start omitting?

15 MR. ROBINSON: Yes.

16 THE COURT: Do you agree with that?

17 MR. ROBINSON: Yes, I believe that those -- that
18 question and that answer then following what you read,
19 Your Honor, should be deleted.

20 THE COURT: Did the State want to delete more than that,
21 or was that where you stopped?

22 MR. THOMAS: No, Your Honor, we did not. There are
23 only three lines there we suggested to deleting on Page 50
24 and that was the seventh, eighth and ninth; reading from the
25 bottom.

1 THE COURT: And Mr. Robinson agrees with that, so that
2 will be deleted.

3 MR. ROBINSON: Yes.

4 MR. THOMAS: Nothing on 51.

5 THE COURT: Now, you want to go on, then, from that
6 line on through 50 and --

7 MR. ROBINSON: It stops at the end of Page 50.

8 MR. THOMAS: The sixth line from the bottom to the rest
9 of 50.

10 THE COURT: All right. We've got three lines omitted.
11 Then what do you want to do?

12 MR. THOMAS: The rest of the page --

13 THE COURT: Omit it?

14 MR. THOMAS: No, I want it in.

15 THE COURT: And then 51, what do you want --

16 MR. THOMAS: Nothing on 51.

17 THE COURT: You are going to stop at the bottom of
18 Page 50?

19 MR. THOMAS: That's right.

20 MR. ROBINSON: Okay.

21 THE COURT: Did you want anything else in after 50?

22 MR. ROBINSON: No, sir.

23 THE COURT: Well, that's easy, then, I'll require that
24 section you wanted in and the other to be left out.

25 MR. THOMAS: Do I correctly understand Your Honor, that

1 all of the rest of that we've asked for, except for the
2 portion that Mr. Robinson wanted included --

3 THE COURT: Is all right.

4 MR. THOMAS: -- can be placed on the tape?

5 THE COURT: Now, I'm concerned, again, about the
6 Jackson-Deno bit. Now, I understand the foundation for the
7 voluntariness of this was all laid much before this page.
8 What are you going to do before that? Are we going to have --

9 MR. THOMAS: We would have the testimony of
10 Sheriff Palmer.

11 THE COURT: You are going to have oral testimony to
12 lay that foundation before we get there?

13 MR. REMAKLUS: Yes.

14 THE COURT: All right, fine.

15 MR. ROBINSON: That was my understanding.

16 THE COURT: You'll be prepared to do that first out
17 of the presence of the jury, to lay the foundation for
18 voluntariness and, then --

19 MR. REMAKLUS: Yes.

20 MR. ROBINSON: Yes.

21 THE COURT: Then it will be presented to the jury?

22 MR. REMAKLUS: Yes, Your Honor.

23 THE COURT: Okay. That's all we're going to do
24 tonight, then.

25 MR. REMAKLUS: I hope.

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THE COURT: We'll be in recess until 9:30.

(Evening recess taken.)

1 WALLACE, IDAHO, THURSDAY, OCTOBER 9, 1975, 5:20 P.M.

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4 (The following proceedings occurred in Room 42 of
5 the Stardust Motel concerning the two night Bailiffs in charge
6 of the jury.)
7

8 THE COURT: Do you solemnly swear that you will keep
9 this jury together during each recess and adjournment during
10 the trial; that you will suffer no person to talk to or
11 communicate with them nor do so yourselves on any subject
12 connected with the trial?

13 MR. ARMBRUSTER: I do.

14 MRS. ARMBRUSTER: I do.
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1 WALLACE, IDAHO, FRIDAY, OCTOBER 10, 1975, 9:30 A.M.

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4 THE COURT: I want to take up a few matters out of the
5 presence of the jury this morning.

6 First, I would want to advise Counsel that prior to
7 commencement of this trial I did have a conference with
8 all of the Bailiffs, warned them -- informed them and carefully
9 went over with them their duties. Last night, right after the
10 evening recess I personally swore the evening Bailiffs to take
11 charge of the jury and that can be repeated unless Counsel have
12 some question about the efficacy of the Court's giving the oath
13 rather than the Clerk. Any question about that?

14 MR. ROBINSON: Defense has no question, Your Honor.

15 THE COURT: I'd like the record -- the Reporter reported
16 that oath and the Clerk would show that in the minutes from
17 last evening that the Arbrusters were sworn by the Court. We
18 neglected to swear the Bailiffs yesterday at the first recess.

19 I have talked to them, they said there were no
20 incidents at all during the day as far as jury separating or
21 anyone contacting the jurors.

22 They are available for questioning if Counsel wants
23 to ask them any questions. Mr. Robinson?

24 MR. ROBINSON: Defense Counsel desires not to question.

25 MR. REMAKLUS: State has no questions.

1 THE COURT: I'd have the Clerk swear them. If you will
2 raise your right hands, please.

3 (Whereupon the Bailiffs were sworn to take charge
4 of the jurors.)

5 THE COURT: I wanted also to take up the matter that we
6 -- pursue the matter we took up out of the presence of the
7 jury last evening a little bit. I'm not sure the record will
8 be complete or clearly reflect the rulings of the Court unless
9 an edited copy of the statement we were referring to is made
10 part of the record.

11 MR. REMAKLUS: Your Honor, the State would be agreeable
12 to stipulating that the Exhibit setting forth the entire
13 statement attached to the State's pretrial brief be marked as
14 State's Exhibit 49 and I would offer that into evidence.

15 THE COURT: I take it that's just offered for purposes
16 of reflecting the Court's rulings on the out-of-jury motion;
17 is not to go to the jury?

18 MR. REMAKLUS: That is correct.

19 MR. ROBINSON: And, Your Honor, we object to all other
20 portions of that Exhibit, save and except for the portion
21 pointed out to the Court, commencing on approximately two-thirds
22 down the page on Page 48 through 49 and 50 with the agreed
23 deletion on Page 50.

24 THE COURT: Well, the purpose of this Exhibit isn't
25 being offered to go to the jury at all.

1 MR. ROBINSON: That's my understanding, but I didn't want
2 to agree to the entirety being an exhibit at this point.

3 THE COURT: For any purpose?

4 MR. ROBINSON: No, for the purpose that the Court has
5 described, fine, with that limited aspect.

6 THE COURT: All right.

7 Well, both Counsel, I've just detached from my
8 copy of the brief the whole statement if Counsel want to look
9 at it so you'll know for sure what we're putting in here.

10 If there's too much there you can take it apart
11 as far as I'm concerned.

12 MR. THOMAS: There is too much because this part right
13 here --

14 THE COURT: Yeah, I think there's more than one.

15 MR. THOMAS: This is it, Your Honor.

16 THE COURT: Fine, let's mark that.

17 (State's Exhibit No. 49 marked for identification.)

18 THE COURT: All right, let me ask, are there any
19 objections to this for the limited purpose of just reflecting
20 the Court's rulings and that this Exhibit is not to go to the
21 jury under any circumstances?

22 MR. ROBINSON: That's my understanding, Your Honor, and
23 also with what the Court had to say last evening about
24 qualification in regard to the voluntariness and I would assume
25 that this would not be offered until the written voluntary

1 statement taken on the 9th day of November, 1974 was admitted
2 by the Court.

3 THE COURT: Well, as I understand Exhibit 49 per se is
4 never going to be offered to go to the jury. There will be
5 a separate presentation of that evidence the Court ruled could
6 be presented to the jury. But, that will be presented in the
7 form, I think, of a tape recording; won't it?

8 MR. REMAKLUS: Yes.

9 THE COURT: An edited tape recording.

10 MR. REMAKLUS: Yes.

11 THE COURT: So, this Exhibit, per se, will never be
12 offered to the jury as I understand it.

13 MR. REMAKLUS: That's correct.

14 MR. ROBINSON: With that understanding, we have no
15 objection.

16 THE COURT: Forty-nine will be admitted for that limited
17 purpose, then.

18 (State's Exhibit No. 49 admitted into evidence.)

19 MR. REMAKLUS: Like to hand it to Your Honor, so it
20 doesn't get confused among the other Exhibits.

21 THE COURT: All right. Counsel ready to proceed with
22 the jury, then?

23 MR. ROBINSON: Yes.

24 MR. THOMAS: Your Honor, we have just one thing first.
25 We would like the record to reflect that we received

1 Dr. Heyrend's written report in accordance with the Court's
2 order for psychiatric examination and it was hand-delivered to
3 us late last evening and I'd like to hand Mr. Robinson a copy
4 of it now.

5 MR. ROBINSON: I'd like to inquire, my understanding,
6 accompanying Dr. Heyrend's written report that was either flown
7 in or brought in by the Idaho State Police; that the
8 prescriptions of Dr. Heyrend were also accompanying -- were
9 the prescriptions.

10 MR. THOMAS: Nothing like that was delivered to us. I
11 have no knowledge of that whatever.

12 MR. ROBINSON: I'll check with Sheriff Gardner.

13 THE COURT: There isn't any reason why they would have
14 been delivered to Counsel.

15 MR. THOMAS: I would like to make this additional comment
16 for the record.

17 Dr. Heyrend's written report did not address itself
18 to one of the questions set out in the Court's order; that is
19 whether an opinion as to whether the crime was a product of
20 substantial mental disease or defect. It is our understanding
21 that Dr. Heyrend does have such an opinion and when he
22 testifies it will be our intention to ask him the question of
23 it. But, he hasn't included any information about it in his
24 written report.

25 MR. ROBINSON: For the Court's information, I do find

1 the prescription is within the envelope that was addressed to
2 me; along with the report and I believe I'll deliver those
3 as to our previous discussion.

4 THE COURT: Very well, you can bring the jury in, then.

5 (Jury entered the courtroom.)

6 THE COURT: Let the record show the jurors are all
7 present.

8 Want to proceed with Mr. Maxwell?

9 MR. REMAKLUS: Yes. Mr. Maxwell.

10
11 MARTIN J. MAXWELL,
12 having been previously duly sworn, took the stand and
13 testified further as follows:

14
15 DIRECT EXAMINATION (Continued)

16 BY MR. REMAKLUS:

17 Q Mr. Maxwell, you've already been sworn and still
18 under oath. If you would take a seat in the witness box.

19 A All right.

20 MR. REMAKLUS: Mark this State's Exhibit 3, please.

21 (State's Exhibit No. 3 marked for identification.)

22 Q BY MR. REMAKLUS: Mr. Maxwell, handing you what has
23 been marked for identification as State's Exhibit 3, would
24 you inspect it and tell us what it is, please.

25 A This is a diagram that I personally drew at the

1 scene south of Donnelly.

2 Q. And when was that diagram prepared?

3 A. On November the 5th, 1974.

4 Q. Now, speak up so the jury can hear you, please.

5 A. On November 5, 1974.

6 Q. And is that the diagram from which you prepared the
7 large diagram that's attached to the bulletin board?

8 A. Yes, it is.

9 MR. REMAKLUS: Thank you. I would offer State's
10 Exhibit 3.

11 MR. ROBINSON: No objection, Your Honor.

12 THE COURT: Three will be admitted.

13 (State's Exhibit No. 3 admitted into evidence.)

14 Q. BY MR. REMAKLUS: Now, the big Exhibit is a
15 blow-up of this one; isn't it?

16 A. Yes, it is.

17 Q. Thank you. Mr. Maxwell, during the evening recess
18 did you have an opportunity to check the Sheriff's logs in
19 connection with this event that we're discussing?

20 A. Yes, I did.

21 Q. And do you have the original Sheriff's logs with
22 you?

23 A. Yes, I do.

24 Q. And after looking that over, do you have any --
25 wish to correct any dates that you may have given or days of

1 the week?

2 A. Yes, I do.

3 Q And what is that, please?

4 A. The original date would have been on a Tuesday
5 rather than a Monday. I recall that it was election day.
6 Also on the Sheriff's log it shows the time that I checked out
7 to vote.

8 Q So, you know that -- so, the jury is not confused,
9 let me ask you this: You went to the scene of the crime on
10 November 5, on Tuesday, 1974?

11 A. Yes, I did.

12 Q And is that the same day that you went down the
13 river and to the automobile?

14 A. Yes, it is.

15 MR. REMAKLUS: Thank you, Mr. Maxwell. You may examine,
16 Mr. Robinson.

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CROSS EXAMINATION

BY MR. ROBINSON:

Q Officer Maxwell, did you in fact have charge for Sheriff Lynskey's office of the entire investigation of these two deaths in Valley County?

A Yes, I did. Sheriff Lynskey assigned me to them.

Q All right. And as part of your investigation was it your job to determine the identity of both of the victims?

A As a part that was assigned to Bud Mason, the State Investigator.

Q Was that assigned by you or by Sheriff Lynskey?

A By both.

Q And did you, in fact, identify both of the victims?

A Bud Mason identified them. I didn't personally, I did visually by photos and fingerprints.

Q Fine. During your investigation was it finally a known fact that as to the identity of the two victims by you?

A Yes.

Q And how was that identity of these two victims accomplished?

A By comparison with photos and also by a visual fingerprint comparison.

Q All right. And from the fingerprint comparison did you obtain written documentation as to the identities of both men?

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A. Yes.

Q Did that include an FBI report?

A. Yes, it did.

Q On both men?

A. I'm not sure on both of them. I don't recall.

Q Were these reports and that identification by written documents made a part of your investigative files?

A. Yes.

Q Do you have those two reports with you?

A. Yes.

Q Are they available to you?

MR. ROBINSON: If we may, Your Honor, I'd like the witness to have his file and those reports.

THE COURT: Do you need to step down to get it?

THE WITNESS: Yes.

THE COURT: Go ahead.

MR. ROBINSON: Officer Maxwell, you can take that back to the stand with you if you want to.

THE WITNESS: Mr. Robinson, I have those reports in the back of my vehicle in another folder.

MR. ROBINSON: May I inquire of Counsel, do you have photocopies of these reports that can be testified from?

MR. REMAKLUS: I don't think that I have, Mr. Robinson. I have two photocopies that may be helpful in your examination.

MR. ROBINSON: May I have these two marked, please.

1 Your Honor, may I inquire as to whether or not any
2 previous A, B and C usage or are we starting with A, B and C
3 right at this point?

4 THE COURT: Trial exhibits are going to start right
5 with A, B and C.

6 MR. ROBINSON: Thank you very much.

7 THE COURT: If there are any exhibits used on the trial
8 that have been used in prior hearings they'll have to be
9 remarked for this trial and identified as being exhibits from
10 another hearing so that the two won't get confused.

11 (Defendant's Exhibits A and B marked for
12 identification.)

13 MR. ROBINSON: May I approach the witness, Your Honor?

14 THE COURT: Yes.

15 Q. BY MR. ROBINSON: Officer Maxwell, I'm handing you
16 State's Exhibit No. 17, State's Exhibit No. 18 and for
17 identification purposes two instruments designated for
18 identification as Defendant's Exhibits A and Defendant's
19 Exhibit B. I'll ask you to examine each of those four
20 documents.

21 Directing your attention first to State's Exhibit
22 No. 17, is that instrument a portion and part of your
23 investigative file of these circumstances?

24 A. Yes, it is.

25 Q. Directing your attention to State's Exhibit No. 18,

1 is that document a part of your investigative file on these
2 circumstances?

3 A. Yes, it is.

4 Q Directing your attention now to Defendant's
5 Exhibit No. A, I will ask you whether or not that document is
6 a part of your investigative file on the circumstances that
7 we're here involved with?

8 A. Yes, it is.

9 Q And directing your attention to Defendant's
10 Exhibit No. B, I'll ask you whether or not that document is a
11 part of your investigative file on the circumstances involved
12 in this case?

13 A. Yes, it is.

14 Q On Defendant's Exhibit A, what does that purport
15 to be?

16 A. This is what is commonly known as a "Rap Sheet".
17 It is a criminal history record.

18 Q All right. And that one specifically applies to
19 which person?

20 A. To John Wayne Bradford.

21 Q And directing your attention to Defendant's
22 Exhibit B, what does that purport to be?

23 A. It's also commonly known as a "Rap Sheet". It's
24 a criminal history.

25 Q And which person does that apply to?

1 A. To Thomas Edward Arnold.

2 MR. ROBINSON: Your Honor, we move the admission of
3 State's Exhibits 17 and 18 and Defendant's Exhibits A and B.

4 MR. REMAKLUS: We'd like to have the documents -- I
5 have an objection, Your Honor.

6 MR. ROBINSON: And, Your Honor, I'd like to have the
7 permission of the Court to make photocopies of my file copies
8 that I had marked as evidence.

9 MR. REMAKLUS: We would object to State's Exhibits
10 introduction of what's been marked here as State's Exhibit 17
11 on the ground that it is not probative of any facts of this
12 case and this is not a fingerprint record and does not prove
13 identity of the victim in and of itself.

14 I would object to State's Exhibit 18 for the same
15 reason and I would object to Defendant's Exhibits A and B that
16 the -- that as to the printed portion is a record of these
17 gentlemen is not probative of anything in this case,
18 Your Honor. I would object to any part of any of these
19 exhibits other than fingerprints themselves.

20 We're not trying the victims of this crime and --

21 THE COURT: Well, I've heard your argument -- your
22 objection. Let me look at the Exhibits.

23 I'm going to sustain the objection on the ground
24 that this is improper cross-examination, except as it relates
25 to identification of the victims and I don't see much in here

1 that deals with that; other than this photograph and some
2 fingerprints. If you want to seaparate the files for that
3 purpose, why, I'll admit those matters as bearing on
4 indentification.

5 MR. ROBINSON: May I inquire further of the witness,
6 Your Honor?

7 THE COURT: Yes.

8 Q BY MR. ROBINSON: Officer Maxwell, do you have any
9 other documents in your investigative file regarding the
10 identification of the two victims, Arnold and Bradford?

11 A Not in my personal file, no.

12 Q Has your personal file been purged of many
13 different papers and turned over to the State's attorneys?

14 A Pictures and other things that have been entered
15 as evidence; other than viewing other pictures that the State
16 Investigator had.

17 Q And part of those pictures are what has already
18 been introduced here in evidence; is that correct?

19 A Yes.

20 MR. ROBINSON: All right, Your Honor, at this point
21 I'll just reserve going further into that matter and probably
22 lay a better foundation.

23 THE COURT: Yes, I'm not going to rule on the
24 relevancy at this point because it may be relevant later in
25 the case. Right now it seems to me, though, this is beyond

1 the scope of direct examination --

2 MR. ROBINSON: All right, sir.

3 THE COURT: -- in that it goes beyond the issue of
4 identification.

5 MR. ROBINSON: All right, sir.

6 Q BY MR. ROBINSON: Officer Maxwell, between the
7 5th day of November and the 8th day of November, 1974, the
8 latter being the date that Thomas Eugene Creech and
9 Carol Spaulding were taken into custody at Glenns Ferry, did
10 your investigation of the deaths of Arnold and Bradford take
11 any other turn directed at any other suspect; other than a
12 young man in his early twenties and a female person, long
13 blonde hair, with a maxi coat and a -- with a hood on it?

14 A Not to my knowledge, no.

15 Q All right. And subsequent to the 8th day of
16 November, 1974, has there been any further continuance of the
17 investigation of the deaths of Arnold and Bradford towards any
18 other suspect other than Thomas Eugene Creech and
19 Carol Spaulding?

20 A No.

21 Q I take it from what you are saying, then, is the
22 investigation in this case directed in any other direction
23 ceased as of November 8, 1974?

24 A No, it didn't. The follow-up on gathering of the
25 rest of our evidence, waiting for our reports, this type of

1 thing was continued.

2 Q Well, I assume that all of those things that you
3 testified to that were sent to the FBI Laboratories, the
4 State Laboratories and such, that was continued?

5 A Yes, it was.

6 Q Okay. To establish the case against
7 Thomas Eugene Creech?

8 A Yes.

9 Q Then, Officer Maxwell, on State's Exhibits 3 and
10 3-A; which are your diagrams, to the best of your knowledge,
11 are those diagrams accurate in all details as you found them
12 on the 5th day of November, 1974?

13 A Yes, they are.

14 MR. ROBINSON: I have no further questions of this
15 witness, Your Honor.

16 THE COURT: Redirect?

17 MR. REMAKLUS: Yes.
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1 REDIRECT EXAMINATION

2 BY MR. REMAKLUS:

3 Q Mr. Maxwell, did your investigation give you any
4 reason to pursue any other unknown suspects in this case?

5 A No, it did not.

6 MR. REMAKLUS: Thank you. I have no further questions.

7 THE COURT: Any recross?

8 MR. ROBINSON: Nothing further, but I would like the
9 record to show that I do desire this witness to remain on
10 call for the defense case.

11 THE COURT: Very well. Step down.

12 MR. REMAKLUS: We'd like to confer just a moment,
13 please, Your Honor.

14 (Brief delay.)

15 MR. REMAKLUS: Your Honor, may we be at ease just for
16 a moment to receive a location of witnesses who were
17 supposed to arrive early this morning?

18 THE COURT: Will it take long enough? We should take a
19 recess.

20 MR. REMAKLUS: It could possibly, if we change our
21 order of proof we'll have to discuss it very briefly.

22 THE COURT: We'll take a short recess, ladies and
23 gentlemen. If you remember the admonition, don't discuss the
24 case and keep your minds open. We'll advise when we're
25 ready to proceed.

1 (Recess taken.)

2 (Jurors re-entered the courtroom.)

3 THE COURT: Show the jurors are all present.

4 Call your next witness.

5 MR. REMAKLUS: Call Steven Hager.

6

7 STEVEN HAGER,

8 a witness produced on behalf of the State, having been first
9 duly sworn, took the stand and testified as follows:

10

11 DIRECT EXAMINATION

12 BY MR. REMAKLUS:

13 Q State your full name, please.

14 A Steven Hager.

15 Q And where do you live, Mr. Hager?

16 A Cascade, Idaho.

17 Q And what is your occupation?

18 A I work for the Highway Department, State Highway
19 Department.

20 Q And what do you do with the State Highway Department?

21 A Maintenance man.

22 Q And what do you do as maintenance man?

23 A Well, we repair the roads mostly.

24 Q And were you -- what is your age, please?

25 A Twenty-one.

1 Q Were you so employed by the Highway Department
2 during the month of November, 1974?

3 A Yes.

4 Q Where did you live then?

5 A In Banks, Banks, Idaho.

6 Q And what section of the road do you maintain,
7 Mr. Hager?

8 A Highway 55 and 16.

9 Q And does -- do you cover that area of Highway 55
10 from Horseshoe Bend, Idaho on the south, past Cougar Mountain
11 Lodge to Donnelly, Idaho?

12 A Yes.

13 Q And is this -- were you personally engaged in that
14 work in that area during November of 1974?

15 A Yes.

16 Q You have a truck and you are right out on the road;
17 are you not?

18 A Yes.

19 Q Mr. Hager, handing you what's been admitted into
20 evidence as State's Exhibit 28-A, I'll ask you to look at that
21 photograph. Do you recognize the automobile in that photograph?

22 A Yes.

23 Q Do you recall where you first saw it?

24 A It was just north of mile post 94 on the North Fork
25 of the Payette River. It was headed south, but it was on the

1 north-bound lane and off the road.

2 Q Was it between the road and the river?

3 A Yes.

4 Q And that's the photograph of the two-tone Buick
5 car, is it not?

6 A Right.

7 Q Do you recall when you first saw it, the car on
8 the highway, Mr. Hager?

9 A Well, I seen it there the day before, but I couldn't
10 tell you for sure.

11 Q And the day before what?

12 A Before I turned it in.

13 Q Um-hmm. So, the second day you saw it you turned
14 it in, is that right?

15 A I believe the second day.

16 Q What do you mean when you say you turned it in?

17 A I just called it into the Sheriff after I looked
18 into it.

19 Q Now, did you make any inspection of the vehicle
20 when it was down there on the river?

21 A Yes. I looked into it and, in fact, I got into
22 it, and then I took the keys and opened the trunk, seen a
23 suitcase with some clothes and stuff in it.

24 Q And what did you do then? Did you lock it back up?

25 A I put the keys back in the ignition. It wasn't

1 locked. Then I seen what appeared to be blood on the steering
2 wheel and dash of the car.

3 Q And then what, if anything, did you do?

4 A Well, then I happened to look over to the river
5 bank because I thought maybe somebody was hurt and stumbled
6 over there. So, I looked over there and I found a bunch of
7 papers, they were strung from the top of the bank down to the
8 river among the rocks there and I picked them up and put them
9 back in the front seat of the car.

10 Q And then what did you do?

11 A And then I went up to Cougar Mountain and called
12 it in to the Sheriff's office in Cascade.

13 Q That would be Cougar Mountain Lodge?

14 A Yes.

15 Q Um-hmm. Handing you what's been admitted into
16 evidence as State's Exhibit No. 27, just look at the contents
17 of that envelope, will you?

18 Do those appear to be the documents you gathered
19 up and put in the car?

20 A Yes, it looks like it.

21 Q Okay. These were found over the bank --

22 A Yes.

23 Q -- by the river?

24 You had nothing further, then, to do with this
25 vehicle, did you, Mr. Hager?

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A. No.

MR. REMAKLUS: You may examine.

MR. ROBINSON: No questions, Your Honor.

THE COURT: You may step down.

MR. REMAKLUS: May this witness be excused to return to
work?

MR. ROBINSON: So stipulated, Your Honor.

THE COURT: Very well, you may leave if you want to,
Mr. Hager.

MR. REMAKLUS: Thank you, Steve.

Call Mrs. Fletcher.

GERALDINE FLETCHER,
a witness produced on behalf of the State, having been first
duly sworn, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. REMAKLUS:

Q Will you state your name, please.

A Geraldine Fletcher.

Q And where do you live, Mrs. Fletcher?

A Meridian, Idaho.

Q And are you employed?

A Yes.

Q And who is your employer?

A State of Idaho, Department of Law Enforcement.

Q And what is your occupation?

A Fingerprint technician.

Q Would you speak up so -- we want the jury to be sure to hear you, Mrs. Fletcher.

A Okay.

Q What did you say your job is?

A Fingerprint technician.

Q And how long have you been so employed?

A Four years.

Q And tell us, have you had special training in this field?

A Yes.

Q And what is that, please.

A It's a training period of three months and then it's on-the-job experience for two years to qualify for this

1 position.

2 Q And where was your three months' training period?
3 Who conducted that?

4 A It was with the Department of Law Enforcement,
5 under the direction of a State Police Sergeant and a
6 Lieutenant.

7 Q And you took, then, on-the-job training?

8 A Yes.

9 Q And were you under the supervision of someone in
10 a position of authority, or an expert in this field?

11 A Yes, both of these officers that attended the
12 FBI Academy in Washington, D.C. and had several years
13 experience with fingerprints.

14 Q And have you had experience in trying to raise
15 fingerprints --

16 A Yes.

17 Q -- things of that nature?

18 Do you have any idea on how many occasions -- how
19 many cases you have investigated?

20 A Oh, over the last three years I suppose we've
21 processed something like 200 to 300 cases.

22 Q Now, directing your attention to the month of
23 November, 1974, were you so employed at that time?

24 A Yes.

25 Q Did you have occasion to go to Cascade, Idaho, on

1 November the 6th, 1974?

2 A. Yes, I did.

3 Q. And what was that occasion, Mrs. Fletcher?

4 A. I was called to process an automobile involved in
5 a homicide.

6 Q. Handing you what's been admitted in evidence as
7 State's Exhibit 28-A, I'd ask you if that's the automobile
8 in that picture that you went up to Cascade to inspect?

9 A. Yes.

10 Q. Also 28-G; is that the same vehicle?

11 A. Yes.

12 Q. And where did you make this inspection of the
13 vehicle, Mrs. Fletcher?

14 A. It was at the Phillips 66 station on Main Street
15 in Cascade.

16 Q. Does this 28-G, the picture of the car, do you
17 know where that was taken?

18 A. Yes. That was inside the garage where the car
19 was impounded.

20 Q. And that's where you made your inspection of the
21 vehicle?

22 A. Yes.

23 Q. Thank you. Now, what did you do -- describe what
24 you did from the time you arrived and during the course of
25 your investigation. What actions did you take?

1 A. I came to the Sheriff's office and was directed to
2 the filling station where I went over the car, all the chrome
3 areas or any metal areas that would show a latent and was
4 dusted and anything that I developed I lifted.

5 Q. And did you get any prints that you could make
6 any comparisons from?

7 A. There were some partial latents but they weren't
8 of very good quality. There was a small ridge area and
9 usually they were partially smudged or just not there.

10 Q. Um-hmm. Handing you what's been marked for
11 identification as State's Exhibit 42, would you -- did you
12 take that photograph?

13 A. Yes.

14 Q. And where and when did you take the photograph?

15 A. This was on November 6th at the filling station
16 when we processed the car.

17 Q. And is that a photograph of the automobile that
18 you have previously identified?

19 A. Yes.

20 Q. And what -- is that a true and accurate representation
21 of what it portrays as it was at that time?

22 A. Yes.

23 Q. Handing you State's Exhibit 43, would you tell us
24 what that is, please.

25 A. This is the driver's side --

1 MR. ROBINSON: I can't hear the witness, Your Honor.

2 THE COURT: You'll have to speak up.

3 THE WITNESS: This is the driver's side, front door on
4 the inside.

5 Q BY MR. REMAKLUS: Of the same vehicle?

6 A Yes.

7 Q Did you take the photograph, Mrs. Fletcher?

8 A Yes.

9 Q And is that an accurate representation of the
10 scene as it was on that date?

11 A Yes.

12 Q Now, with reference to Exhibits 44 and 45, would
13 you inspect them and --

14 A Yes.

15 Q Directing your attention to both exhibits, did
16 you take those photographs?

17 A Yes.

18 Q And are they photographs of the subject vehicle?

19 A Yes.

20 Q And are they true and accurate representations
21 of the scene as they existed at that time?

22 A Yes.

23 MR. REMAKLUS: I would offer State's 42, 43, 44 and 45,
24 Your Honor.

25 MR. ROBINSON: Your Honor, since these are the exhibits

1 that I addressed myself to on the record that had not been
2 exhibited prior, may I inquire of the witness regarding a
3 possible relevancy?

4 THE COURT: Certainly.

5
6 VOIR DIRE EXAMINATION

7 BY MR. ROBINSON:

8 Q Mrs. Fletcher, the photographs were taken by you
9 for what particular purpose?

10 A Well, to show the evidence inside the car.

11 Q Not having anything to do with your specialty as
12 a fingerprint technician?

13 A No.

14 MR. ROBINSON: Your Honor, then I'm going to object
15 not only as to materiality and relevancy but also based upon
16 the fact that they violate the discovery order prior to trial
17 information -- or evidence to have been exhibited to Counsel
18 and I ask that the same be excluded.

19 THE COURT: Any question, Mr. Remaklus, that that
20 order covered photographs?

21 MR. REMAKLUS: No, Your Honor.

22 THE COURT: I'll sustain the objection.
23
24
25

1 DIRECT EXAMINATION (Continued)

2 BY MR. REMAKLUS:

3 Q Mrs. Fletcher, during your investigation and
4 inspection of the automobile there at the 66 station that day,
5 did you get into the vehicle?

6 A Yes.

7 Q And did you make a careful search of the interior
8 thereof?

9 A Yes, I inspected things that I assumed could
10 possibly display fingerprints.

11 Q And who -- was anyone with you during your
12 investigation of the vehicle?

13 A The Deputy Maxwell and Investigator Mason were
14 there for part of the time. But, most of the time I was by
15 myself. |

16 Q Mrs. Fletcher, handing you what has been marked
17 for identification as Plaintiff's Exhibit 46, would you inspect
18 the same, please?

19 Have you seen the exhibit before?

20 A Yes.

21 Q And what -- where did you see that object before?

22 A This particular one I retrieved from the front
23 seat on the driver's side in the automobile.

24 Q And what is that, please.

25 A It's a .22 caliber shell casing.

1 Q And would you tell us exactly where you got that
2 from?

3 A It was on the passenger side of the front seat,
4 approximately, oh, eight or ten inches from the outside in and
5 it was lodged in the crease between the front and back seat.

6 Q And could you describe its position with reference
7 to how it maintained its position in the vehicle?

8 A Well, it was merely lodged here between the seats
9 and when you push the seat down a little bit it was visible.

10 Q And how do you know that to be the same casing?

11 A Well, I retrieved it and put it into this
12 evidence packet and marked it.

13 Q Is that your writing ont he slip of paper attached
14 to it?

15 A Yes.

16 Q And when did you find that shell casing?

17 A That was on November the 6th when I processed the
18 car.

19 Q Um-hmm. And is that when you put it in the
20 evidence envelope and tagged it?

21 A Yes.

22 Q Thank you. Handing you what's been marked for
23 identification as State's Exhibit No. 48, would you inspect
24 it and tell us what it is, please.

25 A It's a .22 caliber shell casing.

1 Q And have you seen it before?

2 A Yes.

3 Q And when and where was that?

4 A On November the 6th when I processed the
5 automobile.

6 Q Was that the vehicle that we've been discussing
7 here this morning?

8 A Yes.

9 Q That was at Cascade, Idaho?

10 A Yes.

11 Q Can you tell where -- tell us where you obtained
12 that shell casing?

13 A This particular one was lodged on the driver's
14 side between the upper and lower back seat -- front seat,
15 between the back and bottom of the front seat on the driver's
16 side.

17 Q And do you recall anything else about its
18 position or where it was at that time?

19 A Well, it was also lodged between the seats and
20 it was like in wet blood.

21 Q And how do you know that to be the same shell
22 casing?

23 A Because it's in the evidence envelope in which I
24 sealed it and it's labeled.

25 Q And is that notation made by you?

1

A. Yes.

2

Q And when was the notation made?

3

A. The same day, November the 6th.

4

Q When you put the object in the envelope?

5

A. Yes.

6

Q Mrs. Fletcher, what did you do, if anything, with those two evidence envelopes?

8

A. I took them back to Boise with me and at a later date I turned them over to Investigator Mason and they were shipped to the FBI for ballistic comparison.

10

11

Q Did you keep them in your possession --

12

A. Yes.

13

Q -- until you gave them to Investigator Mason?

14

A. Yes.

15

16

Q During your investigation and location of those shell casings, could you tell whether or not the same had been recently moved or their position altered?

17

18

A. The casings themselves?

19

Q Yes.

20

A. No, not that I could tell.

21

Q They had not been moved?

22

A. No, I don't believe so.

23

Q And why do you say that?

24

25

A. Well, they were lodged there and they were surrounded by blood. I didn't see any smears on the seat

1 like they had been taken out before or anything like that.

2 Q Would it be fair to say that they were stuck in
3 the blood, then?

4 A. Yes.

5 MR. REMAKLUS: I have no further questions.

6
7 CROSS EXAMINATION

8 BY MR. ROBINSON:

9 Q Mrs. Fletcher, as I understand your job was to
10 examine this vehicle where it was impounded at Cascade, Idaho;
11 is that correct?

12 A. Yes.

13 Q And that in your inspection and examination of
14 this vehicle you found some smudges of, what, palm prints,
15 heel of the hand, or what?

16 A. I found partial fingerprints on the chrome areas
17 like the door handle and window handles and on the rear view
18 mirror there was a partial latent that appeared to be a partial
19 -- partial palm to the front, where a person would take ahold
20 of a mirror to turn it.

21 Q And these were non-identifiable, either as to
22 victim or accused, Mr. Thomas Creech; is that my understanding?

23 A. Yes.

24 Q And my understanding is correct?

25 A. Yes.

1 Q And did you have anything to do with the
2 identification process of the victims?

3 A Well, I identified them by the fingerprints that
4 were taken from the deceased, compared to the previous
5 fingerprinting of the same.

6 Q All right. And previous fingerprinting of the
7 subjects was from what source? FBI reports?

8 A Well, we got a fingerprint card from somewhere.
9 I don't remember if it was an Idaho arrest or some other
10 agency, but we did get a copy of a fingerprint card where
11 they had been previously printed.

12 Q And you in particular did work on that process,
13 taking the fingerprints of Arnold and Bradford and securing
14 solid information as to their identities?

15 A Investigator Mason printed the bodies.

16 Q All right. And you made the comparisons?

17 A Yes. I looked at them and compared them.

18 Q And in your expertise from the information
19 supplied previous, fingerprinting of both Arnold and Bradford,
20 you can here state positively that these two men were
21 positively identified by that means?

22 A Yes, yes

23 Q Did you personally obtain the FBI identification
24 records?

25 A No.

1 Q And who was that done by?

2 A Investigator Mason requested that information.

3 MR. REMAKLUS: I'm sorry?

4 THE WITNESS: Mr. Mason requested the information.

5 MR. ROBINSON: I have no further questions, Your Honor.

6
7 REDIRECT EXAMINATION

8 BY MR. REMAKLUS:

9 Q Mrs. Fletcher, is it unusual to only locate smudge
10 prints on surfaces such as you were investigating?

11 A Yes, it's quite common.

12 Q The smudging is common?

13 A Yes.

14 MR. REMAKLUS: I have no further questions.

15
16 RECROSS EXAMINATION

17 BY MR. ROBINSON:

18 Q Well, Mrs. Fletcher, as I understand the
19 performance of your job didn't identify the smudges with
20 anyone?

21 A That's correct.

22 MR. ROBINSON: Nothing further, Your Honor.

23 THE COURT: You may step down.

24 MR. ROBINSON: Does the State wish to move for the
25 dismissal of this witness?

1 MR. REMAKLUS: Not at this point.

2 MR. ROBINSON: All right.

3 MR. REMAKLUS: Like to call Mr. Rich Crum.

4
5 RICHARD A. CRUM,

6 a witness produced on behalf of the State, having been first
7 duly sworn, took the stand and testified as follows:

8
9 DIRECT EXAMINATION

10 BY MR. REMAKLUS:

11 Q Would you state your full name, please.

12 A Richard A. Crum.

13 Q And where do you reside, Mr. Crum?

14 A I reside in Centerville, Virginia; which is just
15 outside Washington, D.C.

16 Q And what is your occupation?

17 A Special Agent with the Federal Bureau of
18 Investigation.

19 Q How long have you been so employed?

20 A Approximately five and a half years.

21 Q And what are your duties with the Federal Bureau
22 of Investigation?

23 A Presently assigned to the FBI Laboratory in
24 Washington where I work in the firearms identification unit
25 of the laboratory.

1 Q What is the "firearms identification"?

2 A Well, it could be best defined as a study wherein
3 it is possible to identify bullets and cartridge cases as
4 having been fired by a particular weapon and this is to the
5 exclusion of all other weapons. So, the type of examination
6 would sometimes result in a positive identification.

7 Q And is there a basis for those firearms
8 identification, Mr. Crum?

9 A Well, if you are thinking of bullets or cartridge
10 cases, it's based on a comparison of the individual
11 microscopic marks on a questioned bullet or questioned
12 cartridge case; as compared to corresponding markings on
13 test bullets and test cartridge cases; which are fired from
14 a particular weapon. By matching these corresponding
15 individual marks from a questioned bullet, or cartridge case,
16 to a test bullet or cartridge case you then can say that
17 these questioned specimens were fired from a known weapon.

18 Q And what is your educational background,
19 Mr. Crum?

20 A I have a Bachelors Degree in mechanical engineering
21 from the University of Dayton in Dayton, Ohio and I'm
22 presently taking courses at George Washington University in
23 Washington, D.C. pursuing a Masters Degree in forensic science.

24 Q And have you had any specialized training for your
25 present work?

1 A. Yes, I have. The training I received was in the
2 FBI Laboratory and this was under the direct supervision of
3 firearms identification specialists who work in the laboratory.

4 I've also conducted thousands of examinations
5 of bullets and cartridge cases myself. I've read books and
6 other literature in firearms identification and also visited
7 and observed manufacturing processes of arms and manufacturers
8 in the United States.

9 Q In other words, you've gone right to the factories?

10 A. Yes, sir.

11 Q Directing your attention to November, 1974, were
12 you so employed in this occupation?

13 A. Yes, sir.

14 Q Mr. Crum, I would like to ask you to inspect the
15 -- I have four cardboard cartons. I would like to have you
16 inspect the same and advise me if you have seen them before
17 and if so how they came into your possession.

18 A. All right. You want me just to look at the
19 cartons or their contents?

20 Q I want to -- want you to just look at the cartons
21 and then if you can relate them to contents, why, do so.

22 A. All right. These four cartons I received in the
23 FBI Laboratory in November of 1974 from the Sheriff of
24 Valley County and they contained specimens for examination.

25 Q Why don't you be seated, now, maybe we can -- were

1 the boxes sealed when you received them?

2 A Yes, sir. When I received them they were in a
3 sealed condition.

4 Q Did you personally open them?

5 A I personally opened the boxes and removed the
6 specimens, yes.

7 Q And what system -- do you have a system for
8 identifying a specimen there in the lab?

9 A Yes, sir. The specimens that I examined I mark
10 with a "Q" or a "K" number; which is an arbitrary designation
11 just to facilitate report writing. A "Q" would designate a
12 "Questioned" specimen or a specimen that an exam has been
13 requested on.

14 A "K" may represent a "Known" specimen, or a
15 specimen that we're comparing a questioned specimen with.

16 Q Now, would you -- this is probably going to be
17 very awkward, but I'd like to refer to a great deal of
18 Exhibits that are here and I don't know whether I can do so
19 with -- in proper numerical order.

20 Beginning with -- or, do you have -- did you make
21 records of these objects when you assigned "Q" numbers to them
22 that you removed from these boxes?

23 A Yes. I assigned Q-1 through Q-49 and also K-1 to
24 the specimens and I marked these specimens.

25 Q Well, now, would it be possible for you to inspect

1 the evidence here and identify those objects that you have
2 marked with "Q" numbers?

3 A. Yes, sir.

4 Q. Would you please do so?

5 A. Any order?

6 Q. Just follow your "Q" numbers. I think that that
7 would be the easiest, Mr. Crum.

8 A. My Q-1 through Q-4 consists of four bullets.
9 Q-1 through Q-4 consists of four bullets which I marked -- I
10 can remove them from here and look at them?

11 Q. Yes, if you would, please.

12 A. Okay, this is marked on the container Q-3.

13 Q. And red tag, what number is it?

14 A. That's number 13.

15 Q. And that is marked as State's Exhibit 13?

16 A. State's Exhibit 13.

17 Q. So, Q-4 and State's --

18 A. Q-3.

19 Q. -- are the same objects, excuse me.

20 A. All right. This is State's Exhibit 12; which I've
21 marked with symbol Q-2. This is State's Exhibit 10, marked
22 Q-4. This is State's Exhibit 11, marked Q-1. Q-5 is marked --
23 that's State's Exhibit 46.

24 Q. Yes.

25 A. Q-6 marked State's Exhibit 48, Q-7 through 16 are

1 ten cartridges. Would you like me to open those and --

2 Q Please.

3 A -- look at them? Okay, these are the ten cartridges
4 which I've marked Q-7 through Q-16 and are marked State's
5 Exhibit 41.

6 Q Would you put them back in the envelope, please,
7 Mr. Crum.

8 Also would you put the four bottles back into that
9 sack from which you removed them.

10 A Okay. The other specimen which I examined was a
11 pistol which I marked specimen K-1. All right, this is it.

12 Q That is the same -- is there a State's Exhibit
13 number on that?

14 A That is State's Exhibit 22.

15 Q What was your "Q" number?

16 A It was marked K-1.

17 Q K-1 through --

18 A Now, the other specimens I received I did not
19 personally examine. There was no request for me to examine
20 those. They were examined by another examiner in the laboratory.

21 Q And who assigned the "Q" numbers to -- or the
22 other numbers?

23 A I assigned the numbers and then parceled the
24 evidence out to the other examiner. He made his examination,
25 returned it to me and, then, I returned it to the Sheriff of

1 Valley County with the remaining evidence.

2 Q Then can you identify these with reference to "Q"
3 numbers if ---

4 A Yes, sir.

5 Q If you'd consult the list and --

6 A Okay. This is Q-17; which is State's Exhibit 24.

7 Q And what is that?

8 A That is a blue coat which was identified as being
9 from Spaulding.

10 Q Thank you.

11 A Okay, Q-18 was trousers from Spaulding.

12 Q It may be necessary to open some of these bags. Do
13 you recognize any of these bags?

14 MR. ROBINSON: Your Honor, for the record the defense has
15 examined the bags and is satisfied the "Q" numbers contained
16 therein and the articles and the description of the reports,
17 again, I state that I would just as soon not have the bags
18 opened.

19 MR. REMAKLUS: Would you -- let me look at your letters,
20 please, Mr. Crum.

21 THE WITNESS: Um-hmm.

22 Q BY MR. REMAKLUS: Would you enumerate the objects
23 that you received there that are in the bags, Mr. Crum?

24 A All right. I've already mentioned the Q-17, coat,
25 there's a Q-18, pair of trousers, Q-19 and 20 are socks, Q-21

1 is a blouse, 22 are pants, 23 and 24 are a pair of shoes and
2 those were all I identified as being from Spaulding.

3 Q-25, trousers, Q-26 and 27 pair of shoes, Q-28
4 is a shirt, Q-29 belt, Q-30 Levi jacket, 31 nylon jacket.
5 Those are identified as being from Creech.

6 Q-32 and 33 are two socks, 34 trousers, 35 shirt,
7 36 shirt, 37 trousers, 38 undershorts, 39-40, two socks, 41
8 belt, 42 is a shirt, 43 trousers, 44 undershirt, 45 is
9 undershorts, 46 and 47, two socks, 48 and 49 pair of shoes.
10 Specimens Q-42 through Q-49, as being identified by being from
11 Arnold, 36-41 were identified as being from "unknown victim".

12 Q Now, you personally conducted certain tests on
13 certain of the evidence; is this correct?

14 A Yes, sir.

15 Q Handing you what's been marked for identification
16 as State's Exhibits 10, 11, 12 and 13, did you conduct tests
17 on those exhibits?

18 A Yes, I did. These are marked Q-1 through Q-4;
19 which consists of -- well, consists of either bullets or
20 bullet fragments that I conducted an examination on.

21 Q And you also -- did you conduct an examination of
22 State's Exhibit 41?

23 A Yes, I did. This is my specimens Q-7 through Q-16;
24 which are ten cartridges which I conducted an examination on.

25 Q And did you conduct an examination with reference to

1 the pistol?

2 A State's Exhibit 22 is marked K-1 and I also conducted
3 an examination of this.

4 Q Would you tell us what examination that you conducted
5 and how?

6 A There are also two other specimens which I examined.

7 Q Would you tell me what they are?

8 A They are my specimens Q-5 and Q-6; which are two
9 cartridge cases.

10 Q And we have these marked one of them State's 46,
11 now, what "Q" number did you assign to that?

12 A All right, that is marked Q-5.

13 Q And you put that number on, didn't you?

14 A Yes, sir.

15 Q And State's Exhibit 48?

16 A Is marked Q-6 and I did examine those -- both of
17 these.

18 Q Now, these are all of the exhibits that you examined?

19 A Yes, sir.

20 Q Would you tell us what the examination was, how you
21 conducted it and what conclusions, if any, you made as a result
22 of your examinations?

23 A All right. Examination was requested to determine
24 if the four bullets, or bullet fragments, specimens Q-1 through
25 Q-4, and the two cartridge cases, specimens Q-5 and Q-6 were

1 fired in the pistol which was submitted, specimen K-1.

2 In order to do this I had to test fire the weapon
3 and using the test specimens, meaning the bullet and cartridge
4 case, which were fired by the weapon, compare them to the
5 questioned bullets, the questioned cartridge cases.

6 Now, the marks that I was looking for on the
7 cartridge case, for example, were the firing pin impression;
8 where the firing pin of the weapon strikes the head of the
9 cartridge case, leaves an indentation, small microscopic marks
10 within the indentation were used in making my comparison.

11 Now, the marks on the bullets that I was concerned
12 with were rifling impressions on the bullets.

13 Now, for those of you who aren't familiar with
14 that term, it refers to impressions left in the bullet as a
15 result of it passing down the barrel, the barrel is rifled.
16 In other words, it has a series of grooves and they extend
17 down the length of the barrel and when a bullet passes down the
18 barrel it picks up impressions from these grooves. The grooves
19 themselves are referred to as "grooves" and the area between
20 the grooves is referred to as a "land". So, I was concerned
21 with the rifling impressions, or the land and groove impressions
22 on the bullet and I was also concerned with the individual
23 microscopic marks, or scratches within the land and groove
24 impressions.

25 By comparing these scratches it could be possible to

1 effect an identification. I looked at the four bullets, one of
2 the four bullets was, in effect, a .22 caliber copper-coated
3 lead bullet fragment. I was able to determine that it had been
4 fired from a barrel rifled with six grooves, right twist.

5 The other three bullets appeared to be .22 caliber
6 -- excuse me, .22 long rifle caliber, copper-coated, lead
7 bullets. They were very mutilated and all I could say about
8 those is that they were fired from a barrel having a land width
9 of approximately .02 inches.

10 When I made my comparison of the individual
11 microscopic marks with these bullets fired from this pistol I
12 reached a conclusion that there were just not enough individual
13 microscopic marks on these bullets to identify them with any
14 weapon; including this weapon.

15 But, as I said, one of the bullet fragments had been
16 fired from a barrel rifled with six grooves, right twist, and
17 this pistol was also rifled with six grooves, right twist.

18 So, this fragment could have been fired from this
19 pistol.

20 This pistol also has a land width of .02; which
21 matched the land impression width on the other three bullets.
22 So, in effect, they could have been fired from this pistol.

23 The cartridge cases I was concerned with the firing
24 pin impression and I compared the microscopic marks within the
25 firing pin impression on the two questioned cartridge cases,

1 these two, with microscopic marks, or characteristics on the
2 test cartridges fired from -- fired in specimen K-1.

3 Based on that comparison I was able to positively
4 identify these two cartridge cases as having been fired in the
5 submitted pistol.

6 I also examined the ten cartridges that were
7 submitted but they did not bear any marks of value for
8 identification with this particular weapon.

9 Q Did you make a comparison of the ten cartridges
10 with the shell casings that were submitted, Mr. Crum?

11 A. Since the cartridges, the ten cartridges I received,
12 did not have sufficient marks on them for identification or
13 comparison, I did not make such a comparison. I did note that
14 they were -- the ten cartridges that were submitted were .22
15 long rifle caliber cartridges loaded -- were copper-coated,
16 lead bullets and the three bullets and bullet fragment that was
17 submitted were of copper-coated lead.

18 However, I was not able to determine the manufacturer
19 on those so they could have been of different manufacture. I
20 couldn't say.

21 Q But, as I recall -- well, I don't exactly recall,
22 did you say that the fragments submitted were of long rifle, .22
23 long rifle caliber?

24 A. Three of them appeared to be .22 long rifle caliber
25 bullets. The other one is a fragment of a .22 caliber bullet.

1 Q And the ten cartridges are .22 long rifles; are
2 they not?

3 A Yes, sir.

4 Q Can you go through the four exhibits that you --
5 that are in the glass bottles, Mr. Crum, and enumerate which
6 ones you could identify as being fired from the pistol of this
7 caliber and --

8 A Okay. Specimen Q-2 is a .22 caliber copper-coated
9 lead bullet fragment. This is the bullet fragment that I was
10 able to say had been fired from a barrel rifled with six grooves,
11 right twist, such as the barrel of the K-1 pistol.

12 Again, this bullet fragment did not bear sufficient
13 microscopic markings to positively identify it with this
14 pistol. But, the rifling impressions in it were consistent with
15 the rifling in the barrel of this pistol so it could have been
16 fired from this pistol. I couldn't exclude it.

17 The three remaining bullets appear to be .22 long
18 rifle caliber, copper-coated lead bullets. I couldn't tell --
19 excuse me. They bore, either one or more land impressions in
20 the width of the -- the land impressions was .02 inches; which
21 is the same as the width of the lands in the barrel of the
22 K-1 pistol. Therefore, they could have been fired from this
23 pistol, but, again, they did not bear sufficient microscopic
24 markings of value to identify them with this pistol or any
25 other pistol.

1 Q After the examination of all of the items marked
2 with the "Q" number or "K" number, do you know what was done
3 with them?

4 A You are speaking now of all the specimens?

5 Q Yes.

6 A I made my examination on these specimens --

7 Q Yes.

8 A -- I forwarded the other specimens to the
9 serology unit where they were examined. They were returned to
10 me and I then returned them, all the specimens to the Sheriff
11 of Valley County.

12 Q And when you were making your inspection of these
13 cardboard containers, are they the ones that you used to return
14 these specimens to the Sheriff of Valley County, Idaho?

15 A Yes, sir.

16 Q You did that in the mail?

17 A Yes, sir, three of them -- three of the four
18 containers were returned by registered air mail and the other
19 carton was returned by air express because it contained
20 cartridges; which couldn't be sent through regular mail.

21 Q You checked the boxes and know these are the boxes?

22 A I've checked those boxes and they are the boxes.

23 MR. REMAKLUS: You may examine, Mr. Robison.
24
25

1 CROSS EXAMINATION

2 BY MR. ROBISON:

3 Q Mr. Crum, who was the person that you forwarded
4 Q-17 through Q-49 to?

5 A Mr. Tony Hodge, he's the examiner in the Serology
6 Unit who conducted the examination on these items.

7 Q Would you spell his last name.

8 A H-o-d-g-e.

9 Q Now, did you make the written report of the FBI
10 Laboratory's information, return to the Sheriff of Valley County?

11 A Are you saying did I prepare this report?

12 Q Yes.

13 A Yes, sir.

14 Q The one dated December 3rd, 1974?

15 A Yes, sir.

16 Q And as I understand it, you prepared this from your
17 own examination of Q-1 through Q-16 and, then, took the report
18 of Mr. Hodge for the examination of Q-17 through Q-49?

19 A I prepared this report based on my examination of
20 the specimens Q-1 through Q-16 and K-1.

21 Q K-1?

22 A I used Mr. Hodge's written dictation to supply his
23 part of the examination; which is contained in this report.

24 Q All right. And this report was kind of
25 rubber-stamped, "C.M. Kelly, Director of the FBI." But, he

1 did not personally sign that report; is that correct?

2 A. No, sir.

3 Q. Okay. And neither did Mr. Hodge?

4 A. Let me backtrack. I did not sign it but I did
5 initial it. In other words, I saw the report before it went out.

6 Q. Yes.

7 A. All right. Neither of us signed Mr. Kelly's
8 signature.

9 Q. Mr. Crum, I'm not trying to be tricky, I'm just
10 trying to get the significance of the report and the comparison
11 of what it states on the examination of all these different "Q"
12 numbers and the K-1. But, at any rate, it was your job to
13 compile from Mr. Hodge's report and your own examination, the
14 report to be returned to the Sheriff of Valley County regarding
15 these particular items?

16 A. Yes, sir.

17 Q. All right. Now, I understand your examination and
18 your conclusions, but I'd like to delve a little bit into the
19 Q-5 and 6 comparison study in testing with K-1. In other words,
20 the shell casings with the gun itself.

21 Now, the .22 is a rim fire cartridge; is that
22 correct?

23 A. .22 long rifle, is that what you are referring to?

24 Q. Yes.

25 A. Yes.

1 Q And the ones you examined here, the rim fire --

2 A The ones I examined are rim.

3 Q And, specifically so the jury -- I know the men and
4 some of the ladies on the jury understand it because they use
5 guns, but there may be someone here that doesn't understand.
6 What do you mean by "rim fire"?

7 A All right. There are two types of cartridges,
8 basically, center fire and rim fire. What this refers to in
9 effect is where the firing pin of the weapon strikes the
10 cartridge case. In other words, where the primer is on the
11 cartridge case. Inside the cartridge case, on the rim fire case,
12 the primer is around the inside of the rim. So, if this
13 (indicating) represented the rim, the primer -- excuse me, the
14 firing pin would strike the rim of the cartridge case, set off
15 the powder inside, propel the bullet down the barrel.

16 On a center fire cartridge case, it has a primer
17 which is -- can be separated from the head of the cartridge case,
18 placed in the center of the head of the cartridge case and then
19 when the firing pin strikes it, strikes the center of the head
20 of the cartridge case, sets off the primer which ignites the
21 powder and the bullet goes down the barrel. Such a cartridge
22 and primer can be removed and new primer placed in it.

23 Q All right. And the particular materials that Q-5
24 and 6 are made of is what?

25 A What are they made of?

1 Q Yes. Is that brass?

2 A You could call it brass. I'm not a metallurgist.
3 I've never conducted examination of its composition, but it's
4 called "brass".

5 Q It's called "brass" and an alloy with other
6 mixtures?

7 A Right.

8 Q All right. And the firing pin itself in K-1, did
9 you disassemble this gun in order to do your complete testing
10 and examination?

11 A No, sir, I didn't have to. All that was necessary
12 for me to do was to fire this pistol and using the cartridge
13 cases which were fired in this pistol which were struck by the
14 firing pin in this pistol, compare them to the questioned
15 cartridge cases.

16 Q So, then, your test cartridge that you compared
17 Q-5 and 6 to are what you are testifying about, were identical
18 marks on both Q-5 and Q-6 and your test-fired cartridge; is
19 that what it adds up to?

20 A I compared cartridge cases fired in this specimen,
21 the K-1 pistol with the questioned cartridge cases, specimens
22 Q-5 and Q-6. Based on my examination I can say that specimens
23 Q-5 and Q-6 were fired in this weapon; based on a comparison of
24 the individual microscopic marks within the firing pin impression
25 on the known or the test cartridges and the questioned cartridges.

1 Q What was the magnification rate?

2 A The magnification rate that we work with is from
3 12 to 33 power.

4 Q Did you record what magnification you went to in
5 this examination?

6 A I probably used 12, 20 and 33 power; which are the
7 powers available on the scope I used.

8 Q And describe the similarity, or exactness of the
9 marks that led you to your conclusion of positiveness?

10 A All right. When you are dealing with a firing pin
11 impression such as this, the marks that are left on the
12 cartridge case originate from imperfections at the end of the
13 firing pin. In other words, through manufacture and through
14 subsequent wear there are little marks, or indentations,
15 craters, if you will, in the end of the firing pin, like a hammer.

16 Q You used a term there "prager"?

17 A Craters.

18 Q C-r-a-t-e-r-s?

19 A Yes, much like a hammer would have marks,
20 indentations, craters, if you will, on the end of it, if you
21 used it to strike something. A firing pin picks up marks,
22 indentations from continuous firing and also from its
23 manufacturer.

24 These marks are individual in character; that is,
25 they are peculiar to this weapon and this weapon only. So, when

1 a firing pin strikes a softer material such as the cartridge
2 case, it leaves an impression in it. It is down within this
3 impression, marks which are characteristic of the firing pin
4 impression and these are the marks that I used in making my
5 comparison.

6 Q Is it fair to say that these markings, then, would
7 be unique to this weapon and the firing pin on this weapon as
8 are fingerprints on human beings?

9 A These marks are unique. They are individual and
10 they are characteristic of this weapon and this weapon only.

11 Q Is there any doubt at all in your mind, Mr. Crum,
12 that Q-5 and 6, State's Exhibits 46 and 48, were fired in this
13 gun you marked K-1?

14 A There's no doubt in my mind whatsoever.

15 Q And that is State's Exhibit 22?

16 A The weapon is State's Exhibit 22; which is my
17 specimen K-1.

18 MR. ROBISON: I have no further questions, Your Honor.

19 MR. REMAKLUS: I have a couple of questions for
20 clarification only.
21
22
23
24
25

REDIRECT EXAMINATION

BY MR. REMAKLUS:

Q The two exhibits, the cartridge -- the questioned cartridge cases, now, would you explain what you mean when you use that expression?

A By "questioned cartridge cases"?

Q Yes.

A All right. These two specimens, Q-5 and Q-6, were submitted to the laboratory for examination. As I mentioned, we mark specimens with "Q" numbers which could stand for "Questioned" specimen and "K" numbers which is "Known" specimens.

In other words, an exam was requested on these specimens so I marked them with a "Q" number, Q-5 and Q-6 and referred to them as "Questioned cartridge cases".

MR. REMAKLUS: Thank you. I have no further questions.

MR. ROBISON: Nothing further, Your Honor.

THE COURT: You may step down.

MR. REMAKLUS: Thank you very much, Mr. Crum.

I'd like to call Mr. Hodge.

1 ALVIN E. HODGE,
2 a witness produced on behalf of the State, having been first
3 duly sworn, took the stand and testified as follows:
4

5 DIRECT EXAMINATION

6 BY MR. REMAKLUS:

7 Q Will you state your name, please.

8 A First name is Alvin, A-l-v-i-n, middle initial E.
9 Hodge, H-o-d-g-e.

10 Q What is your occupation, Mr. Hodge?

11 A I'm a Special Agent with the Federal Bureau of
12 Investigation. I'm currently assigned at the FBI Laboratory
13 in Washington, D.C.

14 Q Where is the laboratory?

15 A The FBI Laboratory in Washington.

16 Q How long have you been employed by the FBI?

17 A Slightly over six years.

18 Q And what is your educational background, Mr. Hodge?

19 A I have a Bachelors of Science Degree in
20 Pharmacology from Ferris State College in Michigan, I'm a
21 registered pharmacist in the State of Illinois and Oregon. I
22 also have a Master of Science Degree in forensic science from
23 George Washington University in Washington.

24 Q And what is the nature of your work?

25 A I identify blood and other body fluids as it

1 pertains to criminal evidence.

2 Q Have you received any specialized training in your
3 field since you entered the FBI?

4 A Yes, sir. For approximately one year I worked under
5 the direct supervision of other qualified examiners in my unit
6 and I stayed in that capacity until a group of those same
7 examiners deemed me qualified to run individual tests.

8 Q Now, is your employment devoted to this kind of
9 work?

10 A Yes, sir, with the exception of time spent traveling
11 all my time is in the laboratory.

12 Q So, if you are not in the lab, why, you are
13 testifying; is that it, or traveling to and from?

14 A Occasionally a day off.

15 Q Do you have any idea of how many examinations that
16 you conduct annually?

17 A I'd have to give you a kind of off-the-cuff figure.
18 I think last year I worked 150 cases and in these I would have
19 performed thousands of individual tests; either for blood or
20 one of the other body fluids.

21 Q This goes on, probably, for all the years that you
22 have worked there in the lab, is that right?

23 A Yes, that's correct.

24 Q Have you testified in court before, Mr. Hodge?

25 A Yes, sir, many times.

1 Q I suppose you are called upon to testify in State
2 and Federal courts, both?

3 A Yes, sir, approximately 90 per cent of my testimony
4 occurs in State courts because of jurisdiction. But, the rest
5 of the time would be Federal.

6 Q Now, directing your attention to November and
7 December of 1974, were you so employed by the FBI?

8 A Yes, sir, I was.

9 Q Now, with specific reference to this case, were
10 certain items assigned to you for examination?

11 A Yes, sir.

12 Q And I realize this is going to be extremely awkward,
13 Mr. Hodge, but can we identify -- or can you identify the
14 objects that you examined and how these objects came into your
15 possession?

16 A Yes, sir, I can.

17 MR. REMAKLUS: Your Honor, may the witness get down,
18 leave the stand, to inspect these documents?

19 (Brief delay.)

20 Q BY MR. REMAKLUS: Do you have some records that you
21 have prepared?

22 A Yes, sir, I do.

23 Q Would you bring them.

24 MR. ROBISON: Your Honor, the defense offers to stipulate
25 that pursuant to the testimony in at the present time, Mr. Hodge

1 did examine Q-17 through Q-49; all being items of clothing
2 previously identified and that are contained here in State's
3 Exhibits, appropriately marked.

4 THE COURT: Very well.

5 Q BY MR. REMAKLUS: Mr. Hodge, can you, from your
6 reports that you prepared at the time you examined these
7 items, can you tell us the results of your tests without
8 opening some of the bags and getting out the objects?

9 A Yes, sir. I have my work sheet that I made at the
10 time I made the examination present and I can go by them.

11 Q All right. What -- possibly it would, without
12 going through these items one at a time, can you tell us the
13 results of your examination?

14 A Can I --

15 MR. ROBISON: Your Honor, may I ask the witness a
16 question in aid of possible objection to this procedure?

17 THE COURT: Yes.

18 MR. ROBISON: Mr. Hodge, are you relying upon the notes
19 that you made in your work sheet for your testimony at this
20 time?

21 THE WITNESS: Yes, sir.

22 MR. ROBISON: If I may, Your Honor, possibly I could
23 shortcut this if I may examine his work sheet or his notes.

24 THE COURT: Yes. Would it facilitate it if we took a
25 short recess?

1 MR. ROBISON: Yes, it would.

2 THE COURT: Perhaps get these organized if we have to
3 identify individual exhibits.

4 MR. ROBISON: Yes, Your Honor.

5 THE COURT: All right, we'll take a short recess, ladies
6 and gentlemen. Again, if you'd remember the admonition, don't
7 discuss the case and keep your minds open.

8 (Recess taken.)

9 THE COURT: Let the record show the jurors are all
10 present.

11

12 DIRECT EXAMINATION (Continued)

13 BY MR. REMAKLUS:

14 Q Mr. Hodge, what kind of an examination did you
15 conduct in the FBI Lab on the specimens that you examined?

16 A Well, I was requested to identify blood in this
17 particular instance and I have a set procedure which I use to
18 identify a blood stain. In my work I'm working, basically, with
19 stains.

20 Obviously, the first thing I would do would be
21 visually inspect any items, looking for stains that appear or
22 may not appear to be blood, but stains at any rate. Then, the
23 first test that I would do is a screening test; this is the
24 Benzidine Test. It's a very sensitive test for an enzyme that
25 is found in oxygen-transferred tissue.

1 So, based on this test, if it is positive I'll get
2 a very vivid blue color change chemically and the significance,
3 really, of the Benzidine Test is, if no color change occurs, if
4 I get a negative test, then I know that there's no blood in that
5 stain that I can detect and I'll do no further examination of
6 that stain.

7 So, assuming then that test is positive, this would
8 merely indicate that possibility exists blood is there. The
9 reason this isn't a 100 per cent blood test is because the
10 Benzidine Test is also positive in a few other items. So,
11 therefore, it's not just to blood.

12 Then the next thing that I must do is to determine
13 if, in fact, blood is there then this is done by a controlled
14 microchemical test where the formation of a specific crystal is
15 isolated under the microscope. This is a hemochromogen test.
16 It's a formation of a feathery pink crystal, very easy to
17 identify and this is based on the fact that there's hemogen
18 present in the stain. Based on this crystal being identified
19 and found then I know that there is, in fact, blood in that
20 particular stain.

21 So, then, the order of things would be to determine
22 if this is human blood or would it be animal blood. Antiserous
23 or serums are used to determine what the origin of that
24 particular protein in the stain is and the red blood cells being
25 oxygenated in protein will give a particular test to a specific

1 antiserum.

2 If it's positive then I know -- if I'm running it
3 against human antiserous then I know that there's human protein
4 present. If this would be negative then I would attempt to
5 determine the family of animal this could have come from and
6 then I would use domestic animals that would be found in that
7 particular locale and I could tell if it was a goat or elk or
8 bear, beef, deer, whatever.

9 I could not tell, say, a specie of dog, if it was
10 a Pekinese or Poodle, but I could tell a dog from a cat, see.
11 Assuming now that this test is positive and I have it human
12 blood, then if there -- if there is a quantity sufficient and,
13 of course, all these tests are based on how much is present,
14 if there's a quantity sufficient then I will attempt one, two
15 or three different grouping tests to determine the group or the
16 type of the blood that is involved in this particular stain.

17 Each stain then is treated in this manner depending
18 whether I run out of sample.

19 Q Now, Mr. Hodge, during the process I was presented
20 with a photo copy of your laboratory report. Do you have yours
21 up there with you?

22 A I have my work sheets. I do not have a copy of the
23 report.

24 Q Well, the work sheet that I'm holding up, that is
25 what you have?

1 A. Yes, sir.

2 Q. All right. Now, if we start down the list of these
3 "Q" numbers and without opening the bags I notice up here "Q-1,
4 Q-4, bullets. No exam."

5 Does that mean that you did not conduct the
6 examination on those?

7 A. Yes, sir, this is true.

8 Q. Yeah. That's no exam by you, you don't mean that
9 there's no examination of those made?

10 A. These notes refer strictly to my work and I did not
11 examine the bullets. This was done by Mr. Crum.

12 Q. Okay. Now, could we start with the -- where did
13 you start with your testing? Which --

14 A. The first item that I worked on would have been
15 Q-17.

16 Q. And what is that?

17 A. Q-17 was identified to me as a coat from Spaulding.

18 Q. Um-hmm. And did you conduct these tests on that?

19 A. Yes, sir.

20 Q. What result did you get, or what conclusion did
21 you draw?

22 A. Well, on Q-17, coat, I identified human blood,
23 however in this instance there was not a quantity sufficient
24 for grouping tests so I could not attempt to determine the
25 blood group or blood type.

1 Q And what was your "Q" number on that?

2 A Q-17.

3 Q Is that the same as State's Exhibit 24, is it not?

4 A Yes, sir. The "Q" number should be here
5 (indicating).

6 Q Okay. Thank you.

7 Would you take the next -- would you just proceed
8 down the list, please.

9 A Yes, sir. Q-18 I have identified as "trousers
10 from Spaulding" and here I did have a negative Benzidine Test
11 which indicated no blood present and I did no further
12 examination.

13 Q Can blood be washed out of clothing to the extent
14 that your test would be inconclusive?

15 A Yes. However, there are a number of things that
16 would -- a fresh blood stain, as we all know, is fairly easy
17 to get out of clothes with cold water. However, the longer
18 the stain would be on something and the more dried or light the
19 more difficult it would be to get out and if a stain dried,
20 even though it was washed I would, most likely, get a positive
21 Benzidine Test.

22 But, there are very, very many things that I don't
23 know about washing and, therefore, it could have been and I
24 could not have found it.

25 Q Okay. Thank you, Mr. Hodge.

1 Let's continue down your list.

2 A. All right. The next item is Q-19; which is a
3 sock. This also was negative to Benzidine Test and no further
4 examination was made.

5 Q-20 was another sock, negative to Benzidine and
6 nothing was there.

7 Q. Those two socks from Spaulding I have on the FBI
8 report; is that what you are referring to?

9 A. All these things I believe came from Spaulding.
10 I do not have a list on my notes here as such, but the "Q"
11 numbers would correspond to that.

12 Q. To the report?

13 A. Yes, sir.

14 Q. Yeah, thank you.

15 A. Q-21 I have identified as a "blouse from Spaulding"
16 and here again the Benzidine Test was negative.

17 Q-22 I have identified as "panties from Spaulding".
18 Again, the Benzidine Test was negative.

19 Q-23, the left shoe from Spaulding and again the
20 Benzidine Test was negative.

21 Q-24; which is the right shoe from Spaulding, was
22 also negative to Benzidine.

23 Q-25 which I have identified as "trousers from
24 Creech" the Benzidine Test was negative and no further
25 examination was done there.

1 Q-26 identified as "left shoe from Creech" negative
2 to Benzidine.

3 Q-27 was a right shoe from Creech, negative to
4 Benzidine.

5 Q-28 "shirt from Creech" was negative to Benzidine.

6 Q-29 was a belt from Creech, negative to Benzidine.

7 Q-30 was a "Levi jacket from Creech" and here I did
8 identify human blood. I did attempt to group it in numerous
9 places, however, the grouping tests were inconclusive. This is
10 very common because things in the clothing will cause
11 incompatibility and cause a garble of results. Therefore, you
12 can't really make a good conclusion. So, in this particular
13 case, even though there was a lot of blood present and I did
14 attempt a number of times, I could still not determine the blood
15 group.

16 Q You could not determine what?

17 A The blood group of that particular stain, although
18 there was numerous blood present and a number of stains.

19 Q Thank you.

20 A On Q-31 I have listed as a "nylon jacket from Creech"
21 and here again there was four separate stains that were
22 identified to contain human blood and again all of these were
23 inconclusive to grouping.

24 Q And when you say "inconclusive" do you know why they
25 were inconclusive?

1 A. I don't attempt to find out why, I -- either I do
2 have good tests or I don't. However, there are so many things
3 that would cause the inconclusive result as I've already -- soap,
4 detergent, if something is washed and rinsed and there is
5 detergent left in it you very seldom can get good findings.

6 Certain Levis, they have sizings that will also
7 cause a great deal of problems getting groupings. So, whatever
8 is on that particular item, the clothes or whatever it is that
9 would change the acids, base relationship would also affect the
10 grouping tests. So, these things are kind of -- if you get them,
11 fine, and if you don't, why, I'm not really sure why.

12 Q. Okay. Could we continue on down the list, then,
13 Mr. Hodge.

14 A. I believe I'm at Q-32, which is a sock and here again
15 this was negative to Benzidine.

16 Q-33 was another sock which was negative to
17 Benzidine.

18 Q-34 was a pair of trousers which was not listed on
19 this incoming report, or incoming letter, and I don't have those
20 identified as to anyone. However, I did identify human blood
21 and here again there was an ample amount there to try to group.
22 However, the grouping tests again were inconclusive.

23 Q-35 is a shirt, this again was not mentioned in
24 the incoming letter and here again I did identify human blood
25 on three separate stains and again the grouping tests were

1 inconclusive.

2 Q-36, "T-shirt from an unknown victim" and here
3 again I did identify Group A human blood.

4 Q That was -- what number was that?

5 A That's Q-36 and I did identify Group A human blood.

6 Q Thank you.

7 A Q-37 which are "trousers from unknown victim"
8 again I did identify Group A human blood.

9 Q Go ahead, please.

10 A Q-37A, on my notes, indicate there was a handkerchief
11 found in the right-rear pocket here. On this hanky I
12 identified human blood. There was not a quantity sufficient for
13 grouping and this could have leaked through or been there prior,
14 whatever.

15 Q Mr. Hodge, where you've been able to make the
16 groupings, can you tell us whether you could make a blood
17 grouping on these particular ones that you've enumerated and
18 as contrasted with why you couldn't make the grouping with the
19 others?

20 A No. As I've already stated to begin with and may
21 not have mentioned this, but a control cutting is taken from
22 each garment and each cutting -- each different stain, if there's
23 a stain cut to take a grouping with, then there will be an
24 unstained portion taken that is negative to Benzidine, run
25 side by side to determine that the tests I'm getting is from

1 the stain and not from the trousers or the cloth or something
2 else.

3 I have no way of knowing why I get conclusive
4 tests in one stain and why I don't in others. I have,
5 numerous times have gotten inconclusive on a stain and three
6 inches from it, worked the same garment and get very good tests.
7 So, whatever is in that particular area that's causing these
8 tests to go haywire, I don't know. We don't attempt to find
9 out. If the controls are right and the conclusions are all
10 running just the way the controls say they should then I make
11 a conclusion based on at least two of these tests and three if
12 there's enough material there.

13 THE COURT: We will take our noon recess at this time,
14 then.

15 If you will remember the admonition, ladies and
16 gentlemen, don't discuss the case and keep your minds entirely
17 open.

18 We'll be in recess until 1:30.

19 (Noon recess taken.)
20
21
22
23
24
25

1 WALLACE, IDAHO, FRIDAY, OCTOBER 10, 1975, 1:30 P.M.

2 (Jury re-entered the courtroom.)

3
4 THE COURT: Let the record show the jurors are all
5 present.

6
7 ALVIN E. HODGE,
8 a witness produced on behalf of the State, having been
9 previously duly sworn, took the stand and testified further as
10 follows:

11
12 DIRECT EXAMINATION (Continued)

13 BY MR. REMAKLUS:

14 Q Mr. Hodge, could you tell us how far down your
15 work sheet we were before we took the noon recess?

16 A I think I had got to Q-38.

17 Q Okay. Had you commented about Q-38 yet?

18 A No, sir, I don't believe so.

19 Q Would you tell us about Q-38?

20 A Well, Q-38 I have identified as "undershorts from
21 unknown victim" and on this particular case it was
22 inconclusive. Again, there was blood there and it could not
23 be conclusively grouped.

24 On the Q-39, "sock from unknown victim" again there
25 was a negative Benzidine and no further examination was done.

1 There were stains there, however, they were negative.

2 Q-40, the other sock from the unknown victim was
3 also negative Benzidine.

4 Q-41 is "belt from unknown victim" and this again
5 was negative to Benzidine.

6 Q-42 I have identified as "shirt from Arnold" and
7 on Q-42 I identified Group A human blood.

8 On Q-43 I have identified as "trousers from Arnold",
9 again I identified Group A human blood.

10 Q-44 is "undershirt from Arnold", I identified
11 Group A human blood.

12 Q-45 was "undershorts from Arnold" and again I
13 identified Group A human blood.

14 Q-46, a sock, I identified human blood and here
15 there was not a quantity sufficient for grouping tests.

16 Q-47, the other sock I identified Group A human
17 blood.

18 Q. Whose socks were those?

19 A. I just have these listed as "socks" but they would
20 correspond to Q-46 and Q-47.

21 Q. On the report they are listed as "socks from
22 Arnold" then, is that right?

23 A. That would be right.

24 Q. Thank you.

25 A. Q-48 I have identified as the left shoe from

1 Arnold and on the left shoe I identified Group A human blood.

2 On Q-49; which is the right shoe from Arnold I
3 identified human blood. Again, there was not a quantity
4 sufficient for grouping tests.

5 That concludes my tests.

6 MR. REMAKLUS: Would you mark this State's 50.

7 (State's Exhibit No. 50 marked for identification.)

8 Q BY MR. REMAKLUS: Mr. Hodge, handing you what's
9 been marked Plaintiff's -- or State's Exhibit 50, could you
10 identify that for me, please.

11 A Yes, sir. This is a photostatic copy of the notes
12 that I have with me.

13 Q And are they the ones you were just testifying
14 from?

15 A Yes, sir.

16 Q It is a true and correct copy; is it not?

17 A Yes, sir.

18 MR. REMAKLUS: I would introduce State's 50.

19 MR. ROBISON: No objection, Your Honor.

20 THE COURT: Fifty will be admitted.

21 (State's Exhibit No. 50 admitted into evidence.)

22 Q BY MR. REMAKLUS: Mr. Hodge, I know we're all
23 reluctant to open these bags because of odors and so on. Let
24 me ask you this: Are these "Q" numbers that you have been
25 referring to, are they marked -- plainly marked on each one of

1 the objects that you've testified to?

2 A. Yes, sir, that's normal procedure.

3 Q. And --

4 A. Very, very similar to this marking here (indicating).

5 Q. Would it be similar to the mark here on Q-17?

6 A. Yes, sir.

7 Q. What I'm -- what I guess I'm asking you is, if these
8 were opened at a later time if the jury feels they wanted to
9 open them, they could identify each of these things?

10 A. Yes, sir, they would correspond to the "Q's" that
11 I've testified to.

12 MR. REMAKLUS: Thank you. You may cross-examine,
13 Mr. Robison.

14
15 CROSS EXAMINATION

16 BY MR. ROBINSON:

17 Q. As I understand your testimony, Mr. Hodge, you have
18 identified Group A human blood on the deceased victims'
19 clothing?

20 A. Yes, sir, that's true.

21 Q. Unknown victim being John Wayne Bradford and
22 Thomas Arnold; is that correct?

23 A. I don't have the names, but those names are
24 familiar to me. I think those are --

25 Q. Well, if we assume that the "unknown victim" was

1 Bradford and you do have Arnold listed?

2 A. Yes, sir.

3 Q. And those are the only items of clothing that you
4 actually identified groupings as far as human blood is
5 concerned?

6 A. Yes, those that I've testified to.

7 Q. All right. Now, have you seen a copy of the final
8 report that was prepared by Mr. Crum and sent to Sheriff Lynskey,
9 Valley County, Cascade, Idaho?

10 A. Yes, sir, I have.

11 Q. Do you happen to have a copy of it handy?

12 A. I do not have one with me, no, sir.

13 MR. ROBINSON: May I approach the witness, Your Honor?

14 THE COURT: Yes.

15 Q. BY MR. ROBINSON: Just the final page there, I
16 believe, look at the other pages if you want, to make sure,
17 Mr. Hodge, but the final page, three paragraphs and reading that
18 to yourself would you tell me whether or not you feel those
19 conclusions are accurate with the findings that you made and
20 that you just testified to?

21 A. Yes, sir, they appear to be.

22 Q. And the conclusions that were made that human blood
23 was too limited in amount for conclusive grouping purposes
24 identified on Q-17, 46 and 49?

25 A. That's right.

1 Q No blood was found on Q-18 through 29?

2 A That's correct.

3 Q 32, 33, 39, 40 or 41?

4 A That's true.

5 Q And that grouping tests conducted on the human
6 blood identified on Q-30, 31, 34, 35 and 38 were inconclusive?

7 A 30, 31, 34, 35 and 38 were inconclusive, yes, sir.

8 Q All right. Specifically referring to your notes
9 regarding Q-30 and 31, those two items are described as what,
10 sir?

11 A I have Q-30 as "Levi jacket from Creech" and
12 Q-31 as a "nylon jacket from Creech".

13 Q Do your notes reflect where those stains were that
14 were tested?

15 A Yes, sir.

16 Q And where were they?

17 A Well, on the Q-30 I did six different test areas
18 and one cutting was taken from the outside, lower-left area of
19 the jacket and one from the outside, lower-left front; inside,
20 the left button area; outside the left arm; inside the left
21 pocket and outside the lower back area.

22 These were the areas -- the general areas of which
23 would be marked on there as to where you took specific cuttings
24 in this particular instance.

25 Q All right.

1 A And on the Q-31 --

2 Q Just before we leave that, I find that you're
3 testifying that these stains were all on the left of the jacket?

4 A With the exception of the outside, the lower back
5 area.

6 Q Outside, lower back? Where would that be?

7 A Down here (indicating) somewhere, left or right.

8 Q Down on the tail of the jacket somewhere?

9 A Yes, sir.

10 Q All right. And staying, still with Q-30, that
11 blood sample was not identifiable as to grouping, but it was
12 human blood?

13 A Right. I could not make a conclusive grouping but
14 I did identify them all in those areas as human blood.

15 Q Has there ever been any representation to you what
16 group of blood Tom Creech has?

17 A No, sir.

18 Q All right. Let's go to Q-31.

19 A Would you like the same?

20 Q Yes, the areas.

21 A Okay. The first cutting I took was on the outside,
22 lower back. The second -- another stain on the outside, lower
23 back; third cutting was on the lower-right, back, and the
24 fourth was on the -- light stain on the upper-left shoulder area.

25 Q Upper-left shoulder area?

1 A Yes, sir.

2 Q And still blood typing inconclusive?

3 A That's right, sir.

4 Q Did your comparison and your testing give any
5 indication that the blood on the lower back area was different
6 in any way from that found across the left of either Q-30 or 31;
7 the two jackets of Tom Creech?

8 A No, sir. This is something that I couldn't determine.
9 It was two different stains. All I can determine is what is
10 there or what isn't there and I wouldn't be able to associate
11 the two, anyway, as being -- come from the same place or
12 whatever. If the stain is not connected then it would be
13 another stain.

14 Q All right. And specifically could you determine
15 whether or not either of those garments had been washed?

16 A Under normal conditions I can. I would have less
17 sample present if something is washed and, of course, when it's
18 not. Under normal conditions then I would be very hard
19 pressed to be able to get -- or not attempt a blood grouping
20 of a stain that has been washed, say, either through a washing
21 machine or something of this effect.

22 A lot of times you see the stain there and you may
23 get a Benzidine Test but you may be hard pressed to get a
24 confirmatory test for blood; the crystal test I was telling you
25 about. So, usually I can determine, looking at the stain, if

1 that particular stain has gone through the wash cycle at one
2 time or another.

3 Q Do your notes or does your memory at this time tell
4 you whether or not you drew a conclusion that the garment had
5 or had not been washed?

6 A No, sir, I don't. I don't have it as that and
7 under normal conditions if it appeared to me that they had been,
8 I would make that notation.

9 Q And if you were to look at these garments at this
10 time could you, with your expertise, tell whether or not those
11 garments and those stains had gone through any detergent?

12 A I could make a calculated guess. Even at best all
13 I can do is base it on other examinations. I can usually
14 determine in my own mind whether I'm going to be able to
15 continue or get any kind of a result if a stain is bleached out;
16 which is what happens when you wash it and I -- yes, I think I
17 could tell you about that.

18 MR. ROBINSON: Your Honor, as reluctant as I am I would
19 like to have this witness avail himself of 30 and 31 and
20 examine the garments, possibly over by the door and make his
21 determination; if this is approved by the Court.

22 THE COURT: Yes, that's fine.

23 MR. ROBINSON: Would you step down and find the
24 particular bag that has 30 and 31, Mr. Hodge.

25 THE WITNESS: (Witness complied.)

1 (Brief delay.)

2 THE WITNESS: Well, that's the risk we must run, the
3 stained areas are cut and, so, it would be very difficult and,
4 most likely this is why --

5 MR. ROBINSON: Your Honor, may I ask some questions of
6 Mr. Hodge from the position he is standing in?

7 THE COURT: Yes, if he will speak loudly enough so the
8 jury can hear him.

9 Q BY MR. ROBINSON: Mr. Hodge, I notice that you are
10 holding a blue Navy-type hooded jacket; is that correct?

11 A. Yes, sir.

12 Q And that is Q-what?

13 A This is Q-31.

14 Q All right. And I notice the area that you were
15 examining has swatches of cloth cut out?

16 A. Yes.

17 Q Or swatches of cloth?

18 A. This is the areas that I tested. These are the
19 different stains that I tested. The markings on there are
20 markings that I put there. The 1-B indicating this is the
21 first cutting I took and I'm doing tests to identify blood, say,
22 as against semen -- or for semen or whatever.

23 The little arrows indicate this is where a positive
24 Benzidine was taken, when I first did the screening test to
25 determine what were the best stains to try to get a grouping

1 from.

2 Q All right. Now, sir, examining that garment can you
3 tell whether or not the garment was washed and the stains that
4 were there had gone through some sort of a washing process with
5 detergent?

6 A Well, I would say no, based on the fact that it
7 probably did not go through a washing machine as I still see
8 certain amounts of stain there. It could have, certainly, been
9 wiped off and this I wouldn't be able to detect. But, it does
10 not appear that it was washed in the washing machine.

11 Q Mr. Hodge, would you then examine Q-30.
12 Would you describe that garment as a Levi-type
13 jacket?

14 A Yes, sir, I would.

15 Q That also has areas that you cut swatches off from?

16 A Yes, sir, it does. Assuming the same questions
17 apply, I don't think I could make a determination on this
18 particular -- I see no stains that are big enough to really
19 tell. We did have some positive Benzidines but these,
20 evidently, spread over an area and it's not -- more of a --

21 Q What you are saying from your present inspection,
22 you cannot make a determination as to whether or not this
23 garment was put through a wash process after the stains were on
24 the jacket?

25 A Yes, sir, that's correct.

1 Q All right, replace it and seal the bag, please.

2 MR. REMAKLUS: I want him to not seal the bag, please.

3 MR. ROBINSON: All right.

4 Mr. Hodge, while you are there, if you hold just a
5 second. Your Honor, that completes my cross-examination and
6 perhaps if Mr. Remaklus wants him in that position.

7

8 REDIRECT EXAMINATION

9 BY MR. REMAKLUS:

10 Q I'd like to have you take the two coats over to the
11 witness stand and since they are open and too far away for the
12 jury to see the places that were cut out and, so, to explain to
13 them how you make these tests and make your cuttings, since it's
14 been opened up, I think they are entitled to know this.

15 A Well, as I've already explained, these series that
16 I used to determine if blood is in the stain or present and
17 once I do this, now, the first primary test is a screening test
18 and this, in particular items it's very difficult to see stains
19 unless you get in oblique lighting.

20 But, I will look at it under lights and I'll mark
21 the arrows in areas that are stained and that are positive to
22 the Benzidine Test. Then, when I get done doing that I'll
23 select a number of these, maybe the biggest ones or ones that
24 look the darkest, or whatever, to try to determine whether I
25 get a blood group or not. Also I use parts of these to run the

1 preliminary sequence to get to a group of tests.

2 So, the 3-B or the 2-B or 1-B indicate that's the
3 portion of the stain that I cut that was stained.

4 The "C" areas indicate where I would take a sample
5 from the garment that's not stained and make sure that the
6 reaction I'm getting is coming from something on the jacket and
7 not the jacket and this is what -- or the reason for the holes
8 in the particular piece of evidence.

9 Now, on the Levi jacket the same thing applies.
10 This is in not quite as good a shape as the other as far as
11 cleanliness but there's not really enough sample here for me to
12 see how deep or how good the sample is left in the stains
13 because there's, obviously, most of it has been taken out. Here
14 again I made six different cuttings, this (indicating) being
15 number six, this (indicating) being a control cutting. The
16 arrows, again, apply to areas where there was a positive
17 Benzidine.

18 Now, if you can see this, there doesn't appear to be
19 much of a stain in there, however, the Benzidine Test indicated
20 that the possibility would exist that does not mean that there's
21 going to be enough for me to prove it's there, but I do this at
22 the time I received the evidence because many times something
23 happens or something is resubmitted and I've already looked at
24 this once and, now, I'll go back to those same areas and stains,
25 I should get tests in the same areas positive and this is just

1 a little check on everybody along the line.

2 This is, basically, what I do. Is there any other
3 specific question?

4 Q Yes. Maybe we could put those back in the bag if
5 you wouldn't mind, Mr. Hodge. I do have just a couple more
6 questions, but we won't need the garments.

7 THE COURT: Will you need the garments for any recross?

8 MR. ROBINSON: No, Your Honor.

9 Q BY MR. REMAKLUS: You said that you were not able to
10 make the blood groupings. What was your explanation of that
11 with reference to these two garments?

12 A Well, on the Q-30, the Levi jacket, there was six
13 different areas that were stained that the quantity was there
14 and I did attempt to group it. Now, something either in the
15 garment or on the garment caused the grouping tests not to be
16 sufficient that I could determine blood group.

17 Q Well, you did then determine they were blood, though?

18 A Oh, yes, I determined there was human blood there
19 and the next step then would be if there's enough to try to
20 determine the blood group of that particular stain.

21 Q-31; which is the nylon jacket, the same thing
22 applies there with the four different areas that I attempted to
23 cut. Again, in many of these materials, Levis or real rain
24 repellent-type materials have sizings in them and these things
25 just absolutely botch up the testing. So, this is a very common

1 situation.

2 Q So, it was human blood in the Levi jacket, though?

3 A Yes, sir.

4 MR. REMAKLUS: I have no further questions.

5 MR. ROBINSON: Nothing further, Your Honor.

6 THE COURT: You may step down.

7 MR. ROBINSON: May he be excused, Judge?

8 THE COURT: Any objection?

9 MR. REMAKLUS: We would like to have both Mr. Crum and
10 Mr. Hodge excused.

11 MR. ROBINSON: Stipulated by defense, Your Honor.

12 THE COURT: All right, both Mr. Crum and Mr. Hodge may
13 leave if you want to.

14 THE WITNESS: Thank you, sir.

15 MR. REMAKLUS: Like to call Burton Walker.
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1 BURTON WALKER,
2 a witness produced on behalf of the State, having been first
3 duly sworn, took the stand and testified as follows:
4

5 DIRECT EXAMINATION

6 BY MR. REMAKLUS:

7 Q State your name, please.

8 A Burton Walker.

9 Q Where do you reside, Mr. Walker?

10 A In McCall, Idaho.

11 Q And what is your occupation?

12 A I own and operate the Walker Funeral Home there.

13 Q How long have you been engaged in the funeral home
14 business?

15 A Since 1958 in McCall.

16 Q Do you occupy an elected position with Valley County,
17 Idaho?

18 A I do.

19 Q And what is that?

20 A As Valley County Coroner.

21 Q And how long have you been Coroner of our county?

22 A Since 1960.

23 Q Were you Coroner of Valley County, Idaho, on
24 November 5th, 1974?

25 A I was, yes.

1 Q Did you have occasion to go to a spot on
2 State Highway 55 about a mile south of Donnelly, Idaho?

3 A Yes.

4 Q And were there two dead bodies at that place at
5 that time?

6 A Yes.

7 Q Mr. Walker, handing you what's been admitted into
8 evidence as State's Exhibit 1-A, could you inspect that, please.

9 A (Witness complied.)

10 Q That is a photograph of one of the bodies that was
11 there that you went down to look at that day?

12 A Yes, it was.

13 Q Is that the condition that the body was in on that
14 day, at that place?

15 A Yes. I -- to my recollection I was there when that
16 photograph was taken.

17 Q All right. Now, this is Plaintiff's Exhibit 1-G.
18 Would you look at it, please.

19 A Yes.

20 Q And was that the other body?

21 A Yes, the same.

22 Q Were you present when that picture was taken?

23 A Yes.

24 Q All right. Mr. Walker, were you there in your
25 capacity as Coroner?

1 A. Yes.

2 Q Did you make an examination of the two bodies at
3 that time?

4 A. Yes, I believe the Sheriff and the photographer were
5 both there and we -- the bodies had not been moved until that
6 point. Then we moved them around to see whether -- what -- now,
7 whether they were a man or whether there was any sign of life,
8 just a preliminary examination.

9 Q And after you made your preliminary examination,
10 what did you determine about their condition?

11 A. That they -- both bodies were in the same condition
12 and death had apparently been from -- probably 24 hours at
13 least, previous.

14 The rigormortis was totally advanced and any
15 surface blood was coagulated and dried.

16 Q Um-hmm. So, there's no misunderstanding, this was
17 cold weather?

18 A. Yes, sir, it was.

19 Q So, you are not attempting to fix the time of death
20 or anything?

21 A. No, there would be no way for me to do that.

22 Q And cold weather would produce the symptoms of
23 advanced rigormortis; wouldn't this?

24 MR. ROBINSON: Object to leading and suggestive,
25 Your Honor.

1 THE COURT: Sustained.

2 Q BY MR. REMAKLUS: You determined that both bodies
3 were lifeless; did you not?

4 A Right, yes, sir.

5 Q And, Mr. Walker, what, if anything, did you do with
6 these two bodies?

7 A We --

8 Q Did you remove them from the scene?

9 MR. ROBINSON: Objection, leading and suggestive.

10 THE COURT: Yes, I'll sustain the objection.

11 Q BY MR. REMAKLUS: Just proceed and tell me what,
12 if anything, you did with the bodies.

13 A After the Sheriff and his people had completed their
14 investigation we removed them with our equipment, placed them in
15 the hearse and covered them there for transportation.

16 Q And did you then transport the bodies?

17 A Yes, we took them to McCall. As I recall this
18 was between 11:00 and midnight that night and we left them in
19 the vehicle and I contacted the Sheriff again at this time and
20 we were making arrangements for a postmortem examination and
21 an autopsy. I left them in the vehicle at my house and then
22 left about five in the morning for Boise.

23 Q They were locked in the vehicle at your home?

24 A Yes, sir, within sight so that we could keep an eye
25 on it.

1 Q And where did you take the bodies the next morning?
2 A Down to St. Al's Hospital in Boise.
3 Q And --
4 A Their Pathology Department.
5 Q Which hospital, please?
6 A I think it's St. Alphonsus, I'm sorry.
7 Q And did you deliver them to any person there?
8 A Dr. Scott was commissioned to perform the autopsy.
9 Q And did you deliver the bodies to him?
10 A Yes, on his instructions we placed them in the
11 autopsy room in their morgue and stayed with them there.
12 Q Um-hmm. And were you present during the autopsy?
13 A For the first autopsy I was, yes, sir. The next
14 one was performed the next day. I returned to McCall.
15 Q Did you have anything further to do with either of
16 these two bodies?
17 A Other than returning them to their families, no.
18 Q Well, did you see the bodies again?
19 A Not after the autopsy.
20 Q Could you look at the photographs and identify which
21 one of the bodies was autopsied while you were present?
22 A Yes, I have my notes here too.
23 Q And would you consult with your notes and tell us
24 that, please, Mr. Walker?
25 A They had not been identified at this time,

1 Mr. Remaklus, and we identified them as "number one, light brown
2 hair", by my notes, and this was John Wayne Bradford.

3 MR. REMAKLUS: You may examine, Mr. Robinson.
4

5 CROSS EXAMINATION

6 BY MR. ROBINSON:

7 Q Mr. Walker, I notice that Mr. Remaklus did not call
8 you "Doctor". You are not an MD; is that correct?

9 A No, sir.

10 Q Your occupation is that of Mortician?

11 A Yes.

12 Q All right. And this is the specialty you bring to
13 the office of Coroner of Valley County; is that correct?

14 A Yes.

15 Q All right. Now, were these autopsies done at your
16 request and under your supervision?

17 A Yes.

18 Q And you say you were present at St. Al's in Boise,
19 Idaho on November the 6th, 1974 for the first autopsy?

20 A Yes.

21 Q Now, was that an autopsy of both subjects?

22 A The time did not permit that day for both autopsies
23 to be performed so I was present only for Mr. Bradford.

24 Q All right. And was that a complete autopsy?

25 A Yes, sir.

1 Q And did you request blood-alcohol tests?
2 A Yes.
3 Q Did you request urine specimen analysis?
4 A I'll have to refer to Dr. Scott on this.
5 Q Do you have your notes and your resulting autopsy
6 reports?
7 A It would tell you on it. I do not specifically
8 recall. I did call for a blood and -- blood-alcohol and
9 toxicology report and a drug screen and I do not remember right
10 off if I ordered a urinalysis or not.
11 Q The official autopsy reports would be a part of
12 your normal Coroner's file; would they not?
13 A Yes.
14 Q Have you turned your reports over to the
15 Prosecutor?
16 A Yes.
17 MR. ROBINSON: May I approach the witness, Your Honor?
18 THE COURT: Um-hmm.
19 Q BY MR. ROBINSON: Mr. Walker, I hand you two
20 instruments -- first of all, I'll ask you whether or not those
21 are autopsy reports from one Thomas Arnold and one
22 John Wayne Bradford?
23 A Yes, they are, sir.
24 Q And would you examine them closely to make sure
25 that they are the photostats of the original autopsy reports?

1 A. Yes, sir, these are the same.

2 Q And in looking at those reports do you find that
3 ethanol concentration, blood-alcohol tests, were done on both
4 subjects?

5 MR. REMAKLUS: I'd object to this. The reports, of
6 course, speak for themselves. We have Dr. Scott here to
7 testify. We can cover all this through expert testimony and
8 Mr. Walker just stated he's not a doctor.

9 MR. ROBINSON: If it please the Court, the rift of
10 testimony has been, of Mr. Walker, that he is the Coroner and
11 these were ordered by him and that he has an official file and
12 that these autopsy reports are part of his official file.

13 THE COURT: I'm going to sustain the objection because
14 the Exhibit -- he's just reading from the file. The file
15 would be the best evidence of it.

16 MR. ROBINSON: I would agree with Your Honor.

17 THE COURT: And, in other words, he's presenting the
18 contents of the written document.

19 MR. ROBINSON: All right. May I proceed, Your Honor?

20 THE COURT: Yes.

21 Q BY MR. ROBINSON: Mr. Walker, now that you have
22 looked over these two documents, does that refresh your
23 recollection and your memory as to whether or not you did
24 order blood-alcohol tests and urinalysis?

25 A. Yes, it was quite general. I remember asking

1 Dr. Scott to do anything that would pertain to the
2 identification of this person and reflect on the cause of death.
3 It was a kind of general request.

4 Q And their condition at time of death?

5 A Yes, sir.

6 MR. ROBINSON: I have no further questions, Your Honor.

7 MR. REMAKLUS: I have no redirect, Your Honor.

8 THE COURT: You may step down.

9 MR. REMAKLUS: May this witness be excused?

10 MR. ROBINSON: We'd so stipulate.

11 THE COURT: Yes, you are excused if you want to leave,
12 Mr. Walker.

13 MR. REMAKLUS: Thank you, Mr. Walker.

14 MR. ROBINSON: Excuse me, I would rather not consent,
15 or stipulate to a release of Mr. Walker until I know that
16 other matters have been taken care of on identification of
17 documents.

18 THE COURT: Apparently you'll have to remain for a
19 little while, anyway, Mr. Walker, until we get these matters
20 taken care of.

21 MR. ROBINSON: Thank you, Your Honor.

22 MR. THOMAS: Call Dr. Scott, please.
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25

1 DELBERT E. SCOTT,
2 a witness produced on behalf of the State, having been first
3 duly sworn, took the stand and testified as follows:

4
5 DIRECT EXAMINATION

6 BY MR. THOMAS:

7 Q Dr. Scott, would you state your name and address,
8 please.

9 A Delbert E. Scott, M.D., 3742 Trail Circle, Boise,
10 Idaho.

11 Q And what is your occupation, sir?

12 A I'm a physician.

13 Q Do you have a specialty?

14 A I'm a specialist in the practice of pathology.

15 Q And what does the practice of pathology encompass?

16 A I'm certified by the American Board of Pathology
17 in anatomic and clinical pathology. Anatomic pathology is
18 primarily devoted to the study of diseased tissues for whether
19 it is in autopsy form or tissues that are removed at time of
20 surgery or specimens which are obtained, for example, with
21 examination of the uterine, cervix and scraping thereof to
22 evaluate possibility of existing cancer of the cervix.

23 Q Would you give the jury, Dr. Scott --

24 A And clinical pathology is primarily devoted to the
25 various subdivisions thereof, bacteriology, hematology,

1 urine analysis, serology and other less significant subdivisions,
2 chemistry not included but chemistry being the one that I
3 missed in the original statement.

4 Q Would you give the jury some idea of your
5 educational background?

6 A I graduated from Oregon State College, 1957, in
7 absentia --

8 MR. ROBINSON: Your Honor, I stipulate to the Doctor's
9 qualifications.

10 MR. THOMAS: I'd like to have it in the record if we
11 may, Your Honor.

12 THE COURT: All right.

13 THE WITNESS: I graduated from the University of Oregon
14 Medical School, 1959; interned at Kansas City General Hospital
15 '59 and '60. I was in general practice in Ontario, Oregon for
16 one and a half years, in 1961 and '62. I then took a
17 residency in pathology, anatomic and clinical at St. Vincent's
18 Hospital in Portland, Oregon, from 1962 to 1966 and I've been
19 in practice in Boise, Idaho, since 1966.

20 Q BY MR. THOMAS: How long have you been engaged in
21 pathology work, Doctor?

22 A I was a resident physician at St. Vincent Hospital
23 for four years and then subsequent to 1966 I've been in
24 private practice of pathology for nine years and about three
25 months now.

1 Q If I might direct your attention to the date of
2 November 6, 1974 and November 7, 1974, were you called upon to
3 perform autopsies on John Wayne Bradford and
4 Edward Thomas Arnold?

5 A Yes, I was. At that time the identity was not
6 established to a certainty.

7 We identified, tentatively, them according to their
8 color of hair, John Wayne Bradford subsequently he --

9 Q So you put this on in an orderly way?

10 A Yes.

11 Q When you say "we" would you state who was involved?
12 Who brought the bodies to you? Who was present during the
13 autopsies?

14 A "We" in that sense meant myself, our secretarial
15 staff and the members of the Valley County Department of Law
16 Enforcement, Sheriff's Department, and Sheriff Lynskey was
17 present, Mr. Burton Walker was present and Mr. Bud Mason was
18 present during that first autopsy.

19 Q During the first autopsy? Were you later advised
20 of the identity of the person autopsied at that time?

21 A Yes.

22 Q By whom?

23 A Mr. Bud Mason.

24 Q And what identity did he give you?

25 A John Wayne Bradford.

1 MR. ROBINSON: I'm sorry, the witness is allowing his
2 voice to drop --

3 THE COURT: He said "Bradford".

4 THE WITNESS: John Wayne Bradford.

5 Q BY MR. THOMAS: And when did you perform the
6 autopsy on Mr. Bradford?

7 A November 6th.

8 Q 1974?

9 A Yes.

10 Q Was that in the afternoon?

11 A Yes.

12 Q Would you describe what procedures you followed,
13 Doctor?

14 A Well, I initially examined the external surface of
15 the body and with a history of having this individual having
16 been allegedly shot and I proceeded to look for bullet wounds.
17 I think one of the initial things that we did was to obtain
18 some blood from the jugular vein by a puncture. This blood
19 was given to Mr. Lorin Beals, B-e-a-l-s, Toxicologist.

20 Q It was given to Mr. Beals?

21 A Yes.

22 Q With any special instructions?

23 A Yes, to do a blood-alcohol determination.

24 Q What is "blood-alcohol determination"?

25 A Well, it is a chemical determination of the

1 concentration of ethanol within the blood.

2 Q In the blood stream?

3 Go on if you would and describe what you did next.

4 A Upon examination of the body there were three
5 bullet wounds, all of the face and neck. The first one that I
6 described was located just slightly to the right of the right
7 nostril. When probed with a probe, about six inches long,
8 very thin. This proceeded directly posteriorly towards the back
9 of the skull and slightly to the left.

10 The next wound was located just to the inner aspect
11 of the right nostril near the septum of the nose; that part
12 that divides the two nostrils. Again it passed posteriorly and
13 slightly to the left when probed paralleling the path of the
14 other wound.

15 The third bullet wound was located immediately
16 beneath the chin and a little over half an inch to the right
17 of the middle line of the chin, just underneath and proceeded,
18 when probed, directly posteriorly.

19 Upon further examination of the head there was an
20 extensive wound, a prior surgical wound, that extended from
21 the angle of the right jaw up over slightly posterior to the
22 hairline and down to the area in front of the right ear.

23 From the appearance of this and subsequent
24 examination of the brain there was evidence of significant
25 traumatic injury of the head.

1 The further examination of the external surface of
2 the body revealed no further wound. There were several tattoos
3 of the body surface. I think there was a "John + Louis" on
4 the inner aspect of the right forearm and on the outer aspect
5 of the left forearm there was "born to lose". There was
6 another tattoo on both upper arms neither of which -- at the
7 moment I don't recall, but not words as I remember.

8 There were no other significant features of the
9 external surface of the body. I then proceeded to make internal
10 examination of the abdominal and chest cavities. We -- the
11 urinary bladder was quite extended with urine and I obtained
12 -- aspirated with a needle, urine, and I again submitted this to
13 Mr. Beals for a drug screen.

14 These drug screens were done on a routine basis,
15 usually in forensic cases of this nature we do blood-alcohol
16 screens and urinary screens.

17 Then upon examination of the abdominal viscera and
18 the heart there were no -- thoracic viscera, including lungs
19 and heart, there were no significant diseases present. There
20 were some fibrous adhesions of the left pleural space; which
21 again might suggest possible old traumatic injury, possibly
22 rib fractures.

23 The brain was then examined and we found that there
24 was -- the bullet, the first described bullet wound, had
25 entered the cranial cavity at posteriorly, in the lower portion

1 of the posterior skull and had completely disrupted vessels at
2 the base of the brain and was lodged within the cerebellum;
3 which is about fist size and lays at the posterior surface of
4 the cranial cavity just above the medulla oblongata; which is
5 the beginning of the spinal cord. This bullet I then gave to
6 Sheriff Lynskey.

7 I next examined the bone that separates the
8 posterior portion of the brain from the more anterior portion.
9 There's a little ridge which extends from the interior portion
10 of the cranial cavity out towards the ear canal on the inside
11 and we then, on probing, we could tell about where it went so
12 we then -- I took a saw and opened up this area and was able to
13 retrieve another distorted bullet; which I then gave to
14 Sheriff Lynskey.

15 I then looked for the last bullet which was the
16 one that entered beneath the chin. This had gone through the
17 epiglottis; which is a little flat valve that overlies the
18 trachea preventing entrance of food or water when you -- or
19 fluids when you swallow into the trachea.

20 This was perforated by this bullet and the bullet
21 then passed slightly again to the left had struck a lateral
22 portion of a cervical vertebra and was lodged in the muscle
23 immediately next to the spine. I retrieved this and gave it to
24 Sheriff Lynskey.

25 The immediate cause of death in this instance would

1 have been traumatic injury to the brain secondary to the
2 gunshot wound.

3 Q Does that mean, Dr. Scott, that the gunshot wound
4 was the cause of death, or one of them?

5 A The gunshot wound was the cause of death. It had
6 penetrated the vessels at the base of the brain and had
7 struck the cerebellum.

8 Q Do you have any way of being able to determine which
9 of the three gunshot wounds you described was the actual cause
10 of death?

11 A I think that the one located slightly to the right
12 of the right nostril was the fatal wound. The others could
13 well have been non-fatal.

14 Q You mentioned three facial wounds, were those points
15 of entry?

16 A Yes, they were all wounds of entry. There were no
17 wounds of exit. These were about a quarter of an inch in
18 diameter, consistent with a small caliber bullet and there
19 were no powder stippling of the skin surrounding the wounds;
20 which would indicate that they were greater -- they occurred
21 from a gunshot occurring at greater than arm's length; which
22 would usually prevent suicide, or self-inflicted gunshot wounds.

23 On subsequent microscopic examination of excised
24 wounds, there was some residual, unburned powder debris within
25 the wound tracts themselves.

1 The wounds, again, were not contact wounds in that
2 they had very regular edges and not any stellate tears of the
3 wounds of entry; which occurs with wounds that are occurring
4 when the barrel is in contact with the skin surface in that
5 there's abundant gases released into the wound without
6 explosive tears of the surrounding skin.

7 Q Do you have an opinion, based on that information,
8 as to the -- at least the minimum distance from the face the
9 bullets must have been fired from?

10 A I think a rule of arm would pertain in that they
11 were probably greater than two, two and a half to three feet.

12 Q With respect to the blood and urine samples that
13 you mentioned, how did you transmit those to Mr. Beals?

14 A I gave those directly to Mr. Beals at that time.

15 Q Personally?

16 A Either came in there or was in there expecting me
17 to obtain them, or else I took them directly down and gave them
18 to him in his office.

19 Q Now, going on to the 7th of November, 1974, did
20 you then perform an autopsy on Edward Thomas Arnold?

21 A Yes.

22 Q Did you have his identity at the time you began the
23 autopsy?

24 A Yes, I did.

25 Q And from whom, or how did you receive this

1 identity?

2 A I think that even the preceding day they were
3 relatively certain as to the identity of Arnold.

4 On the following day Bud Mason informed me that he
5 was quite certain that that was Thomas Arnold and we had so
6 stated in our -- in my original dictation of the autopsy findings.

7 Q Would you describe your autopsy of Mr. Arnold,
8 please.

9 A The following morning in the presence of
10 Mr. Mason I proceeded with the autopsy on Arnold. Again, we
11 obtained --

12 Q Excuse me, Doctor, but was anyone besides Mr. Mason
13 and yourself present during this autopsy?

14 A No. I proceeded to obtain blood again, for
15 blood-alcohol determination, or any other toxicologic examination
16 that would be necessary on blood.

17 There were numerous tattoos of the external body
18 surface.

19 The sole gunshot wound of entry in this instance was
20 that of the right temple. The wound was located three inches
21 inferior to the vertex of the skull, the most prominent portion
22 of the top of the skull and it was located about two inches
23 back from the right eyebrow.

24 When probed this wound went slightly downward and
25 across and was found -- there was an area of reddish

1 discoloration overlying the temporal mandibular joint; where
2 your jaws articulate with your face.

3 When I cut through the skin in this area I could
4 palpate more readily the bullet immediately beneath the skin
5 surface and I retrieved the bullet; which was somewhat
6 distorted and -- as with all bullets in these cases, and gave
7 it to Mr. Mason.

8 Q During the autopsy is that?

9 A Yes, I gave him, immediately upon recovery I gave
10 it to him.

11 I proceeded then to examine the body cavities and
12 again found nothing of significance as far as other disease or
13 other evidence of trauma. There was -- notably he had,
14 apparently, an old surgical operation of the left frontal
15 sinus such that there was somewhat distortion of his forehead.
16 Upon further examination I couldn't demonstrate the frontal
17 sinus so, apparently, he had gotten a frontal sinusectomy
18 sometime in the distant past.

19 The further examination of the brain, this bullet
20 wound was observed to enter the inferior downward portion of
21 the brain cavity, or the cranial cavity, and had just grazed
22 the lower portion of what we call the temporal lobe; which is
23 out in this temporal region. It had then completely disrupted,
24 severed the internal, or carotid artery on the right, right at
25 the base of the pituitary gland; which lies right in the

1 midline just up in back of your nose.

2 The bullet then, after penetrating, or severing
3 the internal carotid, proceeded onward and had lodged over
4 in this temporal mandibular region; which is where the jaw
5 articulates with the head.

6 The cause of death in this instance would have
7 been the severance of the carotid artery on the right with the
8 associated hemorrhage into the space surrounding the brain,
9 so-called Subdural space; which lies between the tougher lining
10 of the cranial cavity and the underlying brain substance itself.

11 Q. Was the cause of death then related to the
12 gunshot wound?

13 A. Yes. The cause of death would have been, in this
14 instance, a gunshot wound of the head with severance of the
15 internal carotid artery and associated subdural and
16 subarachnoid hemorrhage.

17 Q. Does -- when you say "hemorrhage" does that mean
18 internal bleeding of some kind?

19 A. Yes, "hemorrhage" means bleeding.

20 Q. Were there any powder burns present in the case of
21 Mr. Arnold?

22 A. No, there were not any visibly evidenced and upon
23 subsequent microscopic examination of this wound there were
24 particular unburned powder within the subcutaneous tissues
25 beneath the skin.

1 Q What is the meaning of that?

2 A This usually is associated with a wound of entry.

3 Q I see. Would your opinion be the same in this case
4 as to how far the gun was?

5 A Again, this would imply the absence of any
6 stippling of the skin surface surrounding the wound, in the
7 absence of overlying clothing would indicate that it had come
8 from a distance greater than arm's length.

9 MR. THOMAS: May I approach the witness, Your Honor?

10 THE COURT: Yes.

11 Q BY MR. THOMAS: I'm handing you State's Exhibit 1-B,
12 Dr. Scott, which has been admitted in evidence. It indicates
13 a mark on the back of Mr. Bradford. Do you happen to have any
14 recollection of that?

15 A No, I don't and I think this was an error of
16 omission, apparently, must have been, because in reviewing my
17 reports I don't recall mention of this wound.

18 Q With respect to -- if I may get back to Mr. Arnold
19 again for a moment, did you take blood and urine samples in
20 this case?

21 A Yes, I did take -- again, the urinary bladder was
22 distended with abundant urine and I did obtain a urine specimen
23 and give it to Mr. Beals for toxicologic examination.

24 Q Was this personally transmitted to Mr. Beals by you?

25 A Yes.

1 Q One additional question.
2 You've mentioned having given one of the bullets
3 that you removed from Mr. Bradford to Sheriff Lynskey. Did you
4 give them all to him?
5 A. Yes, I did give them all to him.
6 Q. Was that during the autopsy?
7 A. Yes.
8 Q. Sheriff Lynskey was there during that time?
9 A. Yes.
10 MR. THOMAS: No further questions.
11 MR. ROBINSON: If I may, Your Honor?
12 THE COURT: We will take a ten-minute recess. If you
13 will remember the admonition, ladies and gentlemen, don't
14 discuss the case and keep your minds open.
15 (Recess taken.)
16 THE COURT: Let the record show the jurors are all
17 present.
18 MR. ROBINSON: May I proceed, Your Honor?
19 THE COURT: Are you through?
20 MR. THOMAS: Yes, Your Honor.
21 THE COURT: Yes.
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CROSS EXAMINATION

BY MR. ROBINSON:

Q Dr. Scott, you mentioned tattoos on the surface of the body of one Tom Arnold in your testimony; do you recall that?

A Yes.

Q All right. Now, on Bradford you described particular tattoos on the forearms and on the upper arm. You couldn't remember exactly what those tattoos were, but there were tattoos; is that correct?

A Yes, one comes back to me. I think it was a cross.

Q All right.

A And whether it was right-upper arm or left arm, I'm not sure.

MR. ROBINSON: Would you mark these, please, Defendant's C, D and E, please.

(Defendant's Exhibits C, D and E marked for identification.)

Q BY MR. ROBINSON: Now, Dr. Scott, would you describe what you recall about the tattoos on Tom Arnold?

A As I recall they were so numerous that I didn't attempt to make any description of them except to note that, as I recall, that they were primarily of the upper extremity and trunk; not the fact that I recall -- they were, as I recall, there were many and I didn't attempt to describe them

1 the autopsy findings as submitted to the Valley County Coroner,
2 Mr. Burton Walker.

3 Q And E, what does that purport to be, sir?

4 A I might make one notation and this would actually
5 be a copy of the copy that we have retained because there's
6 been an anatomic coding performed by the secretary on the front
7 sheet and also I think there has been written in by my secretary
8 the name of this "Bradford" and at that time somehow the age
9 that we recorded was 30; although, apparently, this was not
10 correct.

11 This other does not appear -- I don't know -- this
12 doesn't look like a copy and I'm familiar with this document.
13 This, apparently, is a reference to Mr. Beals who did the
14 toxicologic examination. So, I'm not --

15 Q All right, retrieve E from you, then, Doctor.

16 Specifically referring to Defendant's Exhibit C,
17 would you identify that document as to what it is, specifically?

18 A Yes, this is a copy of the record of postmortem
19 examination that has been retained by us for our permanent
20 records at St. Alphonsus Hospital.

21 Q On which subject?

22 A On number one, John Wayne Bradford.

23 Q And is that an exact copy of the copy you have
24 retained in your records?

25 A To the best of my knowledge it is.

1 Q And did you dictate this after you performed this
2 autopsy on that person?

3 A Yes, I did.

4 MR. ROBINSON: We'd ask that admission of Defendant's
5 Exhibit No. C, Your Honor.

6 MR. THOMAS: We would object, Your Honor, principally
7 because this is not the original and significant portions of
8 it are not readable, could very well be misleading under that
9 circumstance.

10 THE COURT: Would you have no objection if a legible
11 copy was submitted?

12 MR. THOMAS: We wouldn't object if a legible copy
13 were legible.

14 THE COURT: No use putting one in if it isn't legible.

15 MR. ROBINSON: May I ask further questions for laying
16 foundation, Your Honor?

17 THE COURT: Yes. I don't think you can lay a foundation
18 that will make it legible if it isn't legible, Mr. Robinson.

19 MR. ROBINSON: This is true, Your Honor, I need to trace
20 where the original is and whether or not the State has a copy
21 that is legible. Do you gentlemen have a --

22 MR. THOMAS: Ours is the same as yours, it's an illegible
23 copy.

24 Q BY MR. ROBINSON: Dr. Scott, have you delivered the
25 original to this document to law enforcement?

1 A. I would think that the original copy would have been
2 sent to Mr. Walker. It may possibly have been sent to
3 Sheriff Lynskey.

4 Q. Do you have any copy in your possession and your file
5 that is more legible than this copy, sir?

6 A. Yes, I believe that probably ours is -- was more
7 legible and that this was copied from the copy which we retained
8 which would have been -- probably made four or five copies.
9 We've retained one and this is a copy of that.

10 Q. Do you find any other area, other than the lower
11 part of Page 1 that is somewhat obscure and illegible?

12 A. Actually I do have a copy which is in my -- I think
13 it's in my suitcase that's more legible than this. So, if you
14 wish --

15 Q. Page 2 and 3?

16 A. Yeah.

17 Q. Are totally legible?

18 A. Yes.

19 Q. The only place that we have one that is -- or an
20 area that is not legible is on the -- this first page; is that
21 correct?

22 A. Yes. I think I could read it, but --

23 THE COURT: Let me look at it.

24 THE WITNESS: I know what it says.

25 MR. ROBINSON: If it please the Court, then at this time

1 I would like to have Dr. Scott read the illegible portion into
2 the record if this is the basis of the objection for the
3 document being admitted.

4 THE COURT: Apparently he can read it, I'd still prefer
5 to have you substitute a more legible copy if he can furnish
6 us one.

7 Q BY MR. ROBINSON: Can you do that, Doctor?

8 A Yes.

9 MR. ROBINSON: With that, Your Honor, should we -- to
10 keep the record straight, have the illegible portion read by
11 the Doctor into the record now and, then, make the substitution.

12 THE COURT: If you need it for purposes of your
13 examination, otherwise I'll just admit it with -- upon the
14 condition that a more legible copy will be substituted.

15 MR. ROBINSON: All right, Your Honor, and we will have
16 Page 1 substituted for it.

17 THE COURT: All right. It will be admitted on that
18 condition, then.

19 (Defendant's Exhibit C admitted into evidence.)

20 MR. ROBINSON: All right, sir, if I may have just the
21 one, Doctor, and I'll ask --

22 THE WITNESS: Bradford?

23 MR. ROBINSON: Yes.

24 Q BY MR. ROBINSON: Now, referring to Defendant's
25 Exhibit No. D, can you identify that particular document?

1 A. Yes.

2 Q Are all three pages of that document legible?

3 A. Reasonably so, with exception of the last
4 paragraph of Page 2.

5 Q And do you also have a copy of --

6 A. Yes.

7 Q And is your copy more legible than the one you have
8 in your hands?

9 A. Yes, I believe that it is.

10 Q And would you supply that to us so that a more
11 legible copy can be substituted?

12 A. Yes.

13 Q Would you identify the instrument.

14 A. This is -- would I identify this?

15 Q This particular Exhibit, Defendant's Exhibit D.

16 A. Yes.

17 Q What does that purport to be?

18 A. This is a postmortem examination on Arnold,
19 Edward Thomas.

20 Q Did you dictate this report?

21 A. Yes, I did.

22 Q And that was following your postmortem examination
23 of --

24 A. Yes.

25 Q -- Mr. Arnold?

1 A Yes.

2 MR. ROBINSON: We ask that Defendant's Exhibit No. D
3 be admitted, Your Honor, with the condition we will supply a
4 more legible copy in that area that seems to be a little
5 obscure.

6 MR. THOMAS: We would object to submitting it unless they
7 can both be submitted. But, with that proviso we would have no
8 objection.

9 THE COURT: All right, it will be admitted on the
10 condition that more legible copies --

11 MR. ROBINSON: These are my file copies, with permission
12 of the Court, I'd like to make copies of them.

13 THE COURT: All right.

14 (Defendant's Exhibit D admitted into evidence.)

15 Q BY MR. ROBINSON: Dr. Scott, I've laid on the corner
16 there an exhibit purporting to show the body of Mr. Bradford.
17 Would you supply yourself with those two photographs, please.

18 Now, is that the photograph that shows
19 Mr. Bradford laying face down?

20 A I can't tell from this photo who this is.

21 Q The photo does show the back of a person who has a
22 red mark diagonally across the right side of the back; is that
23 correct?

24 A That's correct.

25 Q Now, have you made reference to that particular

1 mark in your autopsy report?

2 A. No, I did not.

3 Q. And looking at the photograph that you have there,
4 can you, in your expertise, tell us what that mark is?

5 A. Well, it appears to be an area of abrasion of the
6 body surface and whether it occurred -- whether there's
7 hemorrhage -- in other words, if you were to take a section of
8 that where there's actual hemorrhage into the tissues or
9 whether this is a postmortem hemorrhage, I cannot be absolutely
10 certain.

11 Q. Could this mark have occurred when the body of this
12 person was drug across a rock, or piece of asphalt; similar to
13 State's Exhibit No. 6?

14 A. Possibly so.

15 MR. ROBINSON: Thank you very much, Doctor.

16 I have no further questions of the Doctor,
17 Your Honor.

18 THE COURT: Redirect?

19 MR. THOMAS: Just one question.
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REDIRECT EXAMINATION

BY MR. THOMAS:

Q Dr. Scott, was the mark on the back of Mr. Bradford related in any significant way to his death as far as you know?

A I think not. As I mentioned earlier, I felt that the absence of description my record was an error of omission and it probably had been called to my attention that I probably had observed it, but in dictating I had not -- I had forgotten about it and which may be significant in that it indicates that it was of no significance.

MR. THOMAS: Thank you, Dr. Scott. No further questions.

MR. ROBINSON: I have no further questions.

MR. THOMAS: We'd like to have --

THE WITNESS: May I be excused after obtaining those documents?

THE COURT: Yes, if you could furnish those two documents before you leave.

Any objection to the Doctor being excused once he gets those copies to us?

MR. ROBINSON: Conditioned upon his delivery of the copies making copies, Your Honor, we would have no objection.

MR. THOMAS: No objection, Your Honor.

THE COURT: All right, yes, you may be excused if you will get us those copies.

MR. THOMAS: Call Mr. Beals.

1 LORIN G. BEALS,
2 a witness produced on behalf of the State, having been first
3 duly sworn, took the stand and testified as follows:
4

5 DIRECT EXAMINATION

6 BY MR. THOMAS:

7 Q Mr. Beals, would you state your name and address,
8 please.

9 A My name is Lorin Beals, 4185 Bristol Street, Boise.

10 Q Would you tell the jury what your occupation is?

11 A I am a clinical chemist and toxicologist.

12 Q And where are you employed?

13 A St. Alphonsus Hospital and St. Luke's Hospital of
14 Boise.

15 Q What does the work of the toxicologist involve?
16 Can you explain that?

17 A It involves analysis of body fluids.

18 THE COURT: Would you speak louder.

19 THE WITNESS: It involves the analysis of body fluids
20 and tissues for the presence of drugs, alcohol and substances
21 of that kind, or poisons.

22 Q BY MR. THOMAS: How long have you been employed
23 at St. Alphonsus Hospital?

24 A I have been at these two hospitals now since 1970.

25 Q You say "these two hospitals". Is that -- is

1 St. Alphonsus and what else?

2 A St. Luke's Hospital also of Boise.

3 Q Could you give us some idea of your educational
4 background, Mr. Beals?

5 A I have a Bachelor of Science degree in chemistry,
6 I have a Master of Science degree in toxicology from the
7 University of Maryland and have done graduate studies in
8 biochemistry at the University of Utah.

9 Q You've been in the courtroom this afternoon and
10 heard Dr. Scott's testimony; have you not?

11 A That's correct.

12 Q Were you present at the time Dr. Scott's autopsies
13 were performed on Mr. Bradford and Mr. Arnold?

14 A Yes, I was.

15 Q You heard Dr. Scott's testimony to the effect that
16 he had given you some samples; is that correct?

17 A That's true.

18 Q And did you receive those samples?

19 A Yes, I received them personally from Dr. Scott.

20 Q Would you enumerate for the jury what samples you
21 received from Dr. Scott?

22 A I received blood and urine specimens on two -- from
23 two different individuals, one on the evening of November 6th
24 and another pair of samples on the morning, or during
25 November 7th, 1974.

1 MR. REMAKLUS: Your Honor, we have located the original
2 autopsy reports from Dr. Scott, together with copies, carbon
3 copies, and I think the only difference is that the name of
4 John Wayne Bradford has not been endorsed on the first autopsy
5 and I think we could do that here ourselves.

6 THE COURT: I take it you wouldn't have any objection
7 to putting this name to --

8 MR. ROBINSON: I would not have any objection.

9 THE COURT: Let's do that and substitute them right now,
10 then.

11 MR. REMAKLUS: Dr. Scott may be able to catch his plane
12 now. You may be excused. Thank you.

13 MR. ROBINSON: Before he leaves, Your Honor, I don't
14 want them in evidence.

15 THE COURT: Let's have them produced right now, then.
16 Produce the copies that are marked so you can see just how they
17 are marked.

18 Are you satisfied that they are legible now,
19 Mr. Robinson?

20 MR. ROBINSON: Yes, Your Honor, they are -- may I have
21 the originals marked and substitute them for my copy?

22 THE COURT: Right, we'll have the originals marked
23 C and D, then.

24 MR. REMAKLUS: May the Doctor now be excused?

25 THE COURT: Yes.

1 MR. REMAKLUS: Thank you, Doctor.

2 MR. ROBINSON: Yes, Your Honor, I'm satisfied the
3 originals, they have been marked as Defendant's C and D and
4 with the Court's permission I'll withdraw those I originally
5 had marked.

6 THE COURT: Very well, yes.

7 MR. THOMAS: I'm not sure where we were so I will ask
8 the Reporter to read back the last question.

9 (Question read by the Reporter.)

10

11 DIRECT EXAMINATION (Continued)

12 BY MR. THOMAS:

13 Q Who does the individual sample you received on
14 November 6th refer to?

15 A At the time I did not have the identity so I was
16 going purely on the basis of the autopsy number that was
17 assigned to it by the pathology section and I identified this
18 not only as "Individual No. 1" but as autopsy number 3146.

19 Q Then, with respect to the samples you received the
20 next day, did you have an identity at that time?

21 A I had an identity on that individual as
22 Thomas Edward Arnold, further identified as individual number
23 two and autopsy number 3147.

24 Q Did you later learn the identity of individual
25 number one?

1 A. Yes, I did and wrote in the name in my own
2 handwriting on my records.

3 Q. What name is that?

4 A. John Wayne Bradford.

5 Q. Mr. Beals, would you detail for the jury the tests
6 you performed on these samples and state what you were looking
7 for?

8 A. I was looking for alcohol in the blood, ethanol.
9 I was also screening the specimens for drugs. The system that
10 I used was simply that, a screening technique, but would have
11 included many of the commonly used, or commonly prescribed
12 drugs. It would have included the barbiturates, the
13 amphetamines, pep pills. It would have included such hard
14 drugs as cocaine, morphine, codeine, heroin; other poisonous
15 materials such as strychnine, nicotine and substances along
16 that line.

17 Q. What were the results of the tests you performed?

18 A. On the two individuals in terms of the drug screens
19 I detected nothing of significance. It would have eliminated
20 all of those drugs I just enumerated.

21 In terms of alcohol content on the individual
22 subsequently identified as Bradford I found a blood-alcohol
23 content of 0.14 grams per 100 milliliters of blood.

24 On individual identified as Arnold, the blood-alcohol
25 content which I obtained was 0.195 grams per 100 milliliters

1 of blood.

2 Q What does that indicate to you, Mr. Beals?

3 A Well, it indicates a considerable consumption of
4 alcoholic beverages. It just -- to place it in prospective,
5 I think if a person were driving an automobile, any value
6 obtained over 0.08 grams per 100 milliliters would be
7 considered driving while intoxicated, according to Idaho.

8 So, in one instance the value was close to double
9 this. In another instance in the range of two and a half times
10 that figure.

11 Q Do you have with you today, Mr. Beals, the samples
12 of blood which you tested?

13 A Yes, I have two tubes of blood. They came from
14 these two individuals. The label indicates -- well, to begin
15 with, the labels were placed on the tubes by Dr. Delbert Scott
16 who identified them as specimens one and two, autopsy number
17 3146 being number one and another autopsy number 3147. Also
18 indicated, the specimen 3146 dated 11-6-74, specimen dated --
19 or number 3147 dated 11-7-74.

20 Also on the label I have put my own name to my
21 own signature in order to further identify them as being the
22 specimens that I did have at that time.

23 The one specimen from the evening before I took it
24 directly from Dr. Scott's hand and locked it up in a cabinet to
25 which only I have the key. The second specimen, when I received

1 it, I then opened the cabinet, removed the first and assayed
2 both of them simultaneously.

3 Q Are those the actual specimens that you used for
4 testing?

5 A Yes, sir. These are they and having completed the
6 work then they went back into the locked cabinet and have been
7 in my possession since that time.

8 Q Until now?

9 A Until right now.

10 MR. THOMAS: If I may approach the witness, Your Honor,
11 we would ask to have these specimens marked and admitted into
12 evidence.

13 (State's Exhibits 51 and 52 marked for identification.)

14 MR. ROBINSON: No objection, Your Honor.

15 THE COURT: Fifty-one and fifty-two will be admitted.

16 (State's Exhibits No. 51 and 52 admitted into
17 evidence.)

18 MR. THOMAS: No further questions, Your Honor.
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1 CROSS EXAMINATION

2 BY MR. ROBINSON:

3 Q Mr. Beals, did you make a written report of your
4 findings following this analysis and testing?

5 A Yes.

6 Q Do you have a copy of that with you, sir?

7 A I have a carbon copy. The original of this went to
8 Dr. Scott.

9 MR. ROBINSON: Your Honor, may I approach the witness?

10 THE COURT: Yes.

11 Q BY MR. ROBINSON: Would you examine this to see if
12 Defendant's Exhibit No. E and advise me as to whether or not
13 this is a composite record prepared by you?

14 A I cannot say that I have seen this before.

15 MR. ROBINSON: All right. If I may have your copies of
16 your written reports that you were just referring to, Doctor.

17 May I have these marked, please, Your Honor.

18 (Defendant's Exhibits F and G marked for
19 identification.)

20 Q BY MR. ROBINSON: Doctor, is there a need and
21 necessity that you need copies of these for your records and
22 files?

23 A Not necessarily because they have been duplicated
24 elsewhere.

25 Q And, Dr. Beals, handing you back what has been

1 marked for identification as Defendant's Exhibits F and G, I
2 will ask you whether or not those are your reports that -- or
3 copies of your reports that you submitted to Dr. Scott after
4 performing your examinations for the completion of the autopsy?

5 A. Yes, sir, these are they.

6 MR. ROBINSON: All right. We'd ask that Defendant's
7 Exhibits F and G be admitted, Your Honor.

8 MR. REMAKLUS: Could they be identified a little better
9 for the --

10 MR. THOMAS: We would object to the admission of these
11 unless a detailed connection of what they mean is given. They
12 are not written in terms -- not familiar to the common usage.

13 THE COURT: You'll have the opportunity to redirect.
14 Overruled.

15 F and G will be admitted.

16 (Defendant's Exhibits F and G admitted into
17 evidence.)

18 Q BY MR. ROBINSON: Handing you back, first of all,
19 Defendant's Exhibit F that has been admitted into evidence,
20 I will ask you specifically which subject or individual does
21 that refer to?

22 A. This refers to Thomas Edward Arnold.

23 Q. And do you have reported on that document the
24 blood-alcohol that you testified to?

25 A. Yes, I do have.

1 that are customarily done in toxicological analyses.

2 So, I have, in preparing these forms, had listed
3 in alphabetical order these various things. The first one
4 being alcohol, amphetamines; which are simply the name of a
5 particular form of drug, sometimes prescribed and oftentimes
6 abused, on the street as pep pills or bennies and the like.

7 The next name is barbiturates, a group of 30 or
8 more different compounds that have sedative, or hypnotic
9 effect; often prescribed as sleeping medication or as
10 anticonvulsant drugs for epileptics, often abused on the street,
11 in the names of "Red Devil" and things of that kind.

12 Those first three were actually groups of compounds
13 looked for by myself on the specimens that were provided.

14 The other names are compounds which are occasionally
15 looked for, carbon monoxide in the case of the possibility of
16 fire and suffocation through inhalation of fumes of that sort
17 and so forth.

18 Salicylates representing aspirins, in case of
19 arthritis therapy or in the case of aspirin, overdose;
20 whether accidental or otherwise.

21 Finally, at the bottom I have written in the
22 word "alkaloids". This is just a group name for a chemical
23 class of compound containing nitrogen and because of the
24 nitrogen they are slightly alkaline or slightly caustic in
25 some solution and this would -- is a very wide group of compounds

1 which included some of the ones I mentioned earlier like
2 strychnine, cocaine, heroin, codeine, methadone and nicatine,
3 compounds of this kind.

4 This is the other category, or group of compounds
5 which I looked for in these two individuals and in each instance
6 there I have listed, stating "none detected".

7 It's possible that minute traces of these
8 compounds, perhaps, were present, but the limits of detection
9 of the equipment that I have showed nothing. So that if there
10 were any of these compounds present, they'd be there in such
11 minute amounts that they would have no effect on the behavior
12 or the health or welfare of the individual. So, I feel that
13 to write "none detected" means of such a low level that it has
14 no further meaning.

15 Q So, as you use that form, Mr. Beals, do you mark
16 things in there to indicate what you find?

17 A I do, and if -- as I detect, or look for certain
18 of these classes of compounds I simply note as to whether I
19 detected any and then if I do I often will quantitate or
20 determine precisely how much of that particular compound I did
21 find.

22 Q In this case you have indicated the alcohol amounts
23 you found?

24 A I indicated the alcohol amounts because I measured
25 those specifically. The other compounds would have been looked

1 for in a screening technique which would have either detected
2 them or not detected them. Then I would have followed that
3 with specific procedures that would have let me quantify the
4 amounts of any particular one I would have found.

5 Q Does the fact that you have marked nothing but
6 alcohol mean that you, in your tests, did not detect anything
7 but alcohol in the specimens?

8 A That's true.

9 MR. THOMAS: No further questions, Your Honor.

10 MR. ROBINSON: No further questions.

11 THE COURT: You may step down.

12 MR. THOMAS: May Mr. Beals be excused, Your Honor?

13 MR. ROBINSON: No objection.

14 THE COURT: Yes, you may be excused if you wish to leave,
15 Mr. Beals.

16 MR. THOMAS: Call Steven Rivers, please.
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1 STEVEN PAUL RIVERS,
2 a witness produced on behalf of the State, having been first
3 duly sworn, took the stand and testified as follows:

4
5 DIRECT EXAMINATION

6 BY MR. THOMAS:

7 Q Mr. Rivers, would you state your name and address,
8 please.

9 A My name is Steven Paul Rivers and I live in
10 Portland, Oregon.

11 Q What is your occupation?

12 A I'm a physician.

13 Q Did you ever come in contact with the defendant in
14 this case, Mr. Creech, before?

15 A Yes, I have.

16 Q Would you tell the jury when that was?

17 A Yes. It was last November, 1974, while I was
18 traveling across country in my car.

19 Q Would you explain the circumstances of how you
20 happened to come in contact with the defendant?

21 A I was traveling from Portland, Oregon to Maryland
22 and while I was passing through the State of Idaho I came to a
23 rest stop on Interstate 80, just east of Boise, and I was
24 approached at that time while still in my car by Miss Spaulding
25 and asked if --

1 Q That was Carol Spaulding?

2 A Yes. And asked if her and her boyfriend who
3 proved to be Mr. Creech, could stay in the car for awhile
4 because it was very cold outside. I allowed them to do this and
5 when I subsequently took off a few minutes later, I told them
6 that I was going in the same direction as they were, as far as
7 Salt Lake City, and could give them a ride that far.

8 However, it being the middle of the night I -- and
9 having traveled from Portland early that morning I wanted to
10 pull into a restaurant for a cup of coffee and the first
11 restaurant that I could find that was open was in Glenns Ferry,
12 a little further down the road. I went into the restaurant to
13 get a cup of coffee with Carol Spaulding. Mr. Creech elected to
14 remain in the car in order to sleep in the front seat.

15 There was an officer in the restaurant who was
16 Officer Hill and he said nothing to us while we were in the
17 restaurant but shortly after we got back into the car to proceed
18 east out of Glenns Ferry we were apprehended when -- on the road
19 in my car.

20 Q Was your car stopped?

21 A Well, he came up behind me and, you know, indicated
22 that he wanted me to pull over.

23 Q That was Officer Hill? Do you know where
24 Officer Hill works?

25 A I understand that he works for the Glenns Ferry

1 Police Department.

2 Q Was Mr. Creech arrested at that time?

3 A Yes.

4 Q And how about Miss Spaulding?

5 A Yes.

6 Q Did you have any conversation with either Mr. Creech
7 or Miss Spaulding about the reason that you were being stopped?

8 A No.

9 Q Did you observe at any time any unusual markings on
10 Mr. Creech?

11 A No.

12 Q Did you have an opportunity to look at him carefully?

13 A No, I really didn't. I say, it was in the middle
14 of the night and I was driving.

15 Q What happened after Mr. Creech and Miss Spaulding
16 were arrested; do you know?

17 A Well, we were all taken to the police department at
18 Glenns Ferry and, then, subsequently to Mountain Home, county
19 seat, and that was the last I saw of either one of them.

20 Q Do you recall what the date was, Mr. Rivers?

21 A No, I don't. I just remember that it was very early
22 on Friday morning.

23 Q A Friday morning?

24 A Yes. I had left Portland on Thursday morning and
25 we were arrested in the middle of that night and -- well, after

1 midnight so it would have been Friday morning.

2 Q Was that in November of 1974?

3 A Yes. I just can't recall the exact date but it was
4 in early November.

5 Q Do you recall what Mr. Creech and Miss Spaulding
6 were wearing at the time?

7 A No.

8 Q Do you recall anything about Miss Spaulding's
9 clothing at all?

10 A Well, it was a bit disheveled but otherwise not
11 unreasonable for clothing for hitchhikers to be wearing.

12 Q Did you observe any unusual behavior on the part of
13 Mr. Creech or Miss Spaulding during the time that the --
14 particularly around the time the car was being stopped?

15 A No -- well, no. I was just concerned myself with
16 why we had been stopped. I thought that the police wanted to
17 spot check me because I had an out-of-state license plate and
18 I didn't observe any unusual behavior on either of their parts.

19 Q Were you watching them at the time or were you
20 watching the police car?

21 A Well, when they signaled me to pull over all I did
22 was get my registration card out of my glove compartment,
23 assuming that I was going to be spot checked and --

24 Q Did you see what the other persons were doing during
25 that time?

1 A. No, I really didn't notice.

2 Q Were you looking?

3 A. No.

4 MR. THOMAS: Thank you, Mr. Rivers. Your witness.

5

6 CROSS EXAMINATION

7 BY MR. ROBINSON:

8 Q Mr. Rivers, what kind of a signal did the police
9 officer use to halt your vehicle?

10 A. He turned on his overhead flashing lights.

11 Q Any siren?

12 A. No.

13 Q What was the hour of the day?

14 A. It was approximately 2:00 a.m. I didn't have a
15 watch on at the time but I seem to recall it being around
16 2:00 a.m.

17 Q On the 8th day of November, 1974?

18 A. As I say, I don't recall the exact day, but it was
19 the night between the Thursday and Friday of that week.

20 Q Would you describe the circumstances and the events
21 that took place immediately after you brought your vehicle to a
22 stop?

23 A. Well, as I say, I got my driver's license and
24 registration ready and I opened the door to my car to get out.
25 As I got out I was rather surprised to see a couple of guns

1 trained on me and asked to put my hands up on the roof of the car.
2 Subsequently -- well, the --
3 Q And take the position for frisking?
4 A Yes.
5 Q All right. Now, just before, or just at the time you
6 were stopped, would you give the position of the people in the
7 car? You were driving?
8 A I was driving, Miss Spaulding was next to me and
9 Mr. Creech was at the door, all in the front seat.
10 Q All in the driving -- what kind of a vehicle?
11 A I have a 1967 Oldsmobile Cutlass, hardtop, two-door.
12 Q All right. Do you have a police band radio in that
13 vehicle?
14 A No.
15 Q Nothing to monitor police calls with at all?
16 A No.
17 Q Were there any other type or radios in the car that
18 one could monitor police calls?
19 A No, I had no radio in the car.
20 Q No radio at all?
21 A None.
22 Q Tape deck?
23 A Yes, I had a tape deck.
24 Q All right. And when you debarked the car and got
25 out and assumed this position as ordered by the police officer,

1 what happened to the other two occupants of that car?

2 A. They got out the other side.

3 Q. Could you see them?

4 A. I saw them get out, yes.

5 Q. What happened to them immediately thereafter?

6 A. Well, I don't recall the exact positions that

7 everyone took, but we were all "frisked" as you put it.

8 Q. Were there guns trained on all three of you?

9 A. Well, there were two police officers and they both

10 got out of either door of their car and one had a rifle trained

11 towards my car and the other had, I believe, a handgun trained

12 on the car. I didn't -- I don't know if they were pointing it

13 at any specific individual.

14 Q. And what was stated first by whom?

15 A. Well, the officers told us, you know, told everybody

16 to get out of the car and to -- I remember being told to put

17 my hands on the roof.

18 Q. All right. Were you then, after a short period of

19 time, taken to the Glenss Ferry Police Department?

20 A. Yes.

21 Q. How long were you there at the scene where they

22 stopped you?

23 A. The scene where they stopped us?

24 Q. Yes.

25 A. About 15 minutes, maybe.

1 Q Did they run a check on the vehicle license ---

2 A Yes.

3 Q -- for wants?

4 A Yes.

5 Q Which of the officers did that; if you know?

6 A I don't know.

7 Q Were you handcuffed in your being transported from
8 the scene of your being stopped to the Police Department?

9 A No.

10 Q Were any of the three individuals handcuffed to be
11 transported?

12 A I don't think so, not from the scene of my vehicle
13 to the Police Department.

14 Q At any time while in Glenss Ferry, were you advised
15 of your rights?

16 MR. THOMAS: Objection, Your Honor. Irrelevant.

17 THE COURT: Overruled.

18 THE WITNESS: Yes.

19 Q BY MR. ROBINSON: By whom?

20 A By several people. At first the police officers
21 and subsequent police investigators.

22 Q All right. Now, I'm still at Glenss Ferry Police
23 Department, not yet at Mountain Home, I'm talking of Glenss Ferry
24 only.

25 A Well, at Glenss Ferry we were met there eventually

1 by Mr. Freeman, a Police Investigator.

2 Q And was he the one that advised you of your rights?

3 A I think one or the other of the original two
4 officers had advised me of my rights and then Mr. Freeman also
5 advised me of my rights at a later time.

6 Q Were you present when either Carol Spaulding or
7 Tom Creech were advised of their rights?

8 A I don't remember.

9 Q Were you placed under arrest?

10 A Temporarily.

11 Q Were you placed under arrest?

12 A Well, yeah, okay.

13 Q Where? Glenns Ferry or Mountain Home?

14 A Well, I'm not sure. I'm assuming that I was
15 arrested when my car was stopped, but that's why I'm not sure
16 what you mean by "placed under arrest".

17 Q Did any officer ever make the statement to you
18 "You are under arrest"?

19 A Yes.

20 Q Which officer?

21 A I don't recall.

22 Q Where and when?

23 A Again, I just don't recall.

24 Q Was that before or after the search of your car?

25 A I don't recall. There was a lot of things going on

1 that night and I was in a very disrupted state of mind by that
2 time and a lot of these details I just can't recall at this
3 date.

4 Q Did the police find drugs in your vehicle?

5 THE WITNESS: Your Honor, do I have to answer?

6 THE COURT: Well, perhaps we should take this up out of
7 the presence of the jury.

8 We'll excuse you for a few minutes, ladies and
9 gentlemen, and you will remember the admonition the Court gave,
10 don't discuss the case and keep your minds open.

11 The Bailiff will advise you when we're ready to
12 proceed.

13 (Jury left the courtroom.)

14 THE COURT: Yes, I'll advise you that you do -- are
15 protected by a right against self-incrimination and you may
16 decline to answer any questions that might tend to incriminate
17 you if you elect to do so.

18 THE WITNESS: Thank you. I decline to answer.

19 THE COURT: Counsel want to discuss the problem?

20 MR. ROBINSON: Yes, Your Honor, I want these pleadings
21 of the Fifth Amendment rights to occur in the presence of the
22 jury.

23 MR. THOMAS: We object to that.

24 THE COURT: Do you have any authority that you have the
25 right to have that occur in the presence of the jury, Mr. Robinson?

1 MR. ROBINSON: Not right offhand, Your Honor. Could I
2 proceed with my line of inquiry out of the presence of the
3 jury and then evaluate as to whether or not I will appeal to the
4 Court on that matter?

5 THE COURT: Well, if the answer is going to incriminate
6 him, it will do so out of the presence or in, so that wouldn't
7 resolve that problem.

8 MR. ROBINSON: No, I was laying a basis of a foundation
9 of prior convictions, or any convictions of a felony.

10 THE COURT: Well, that isn't the question you asked.
11 I don't know whether he'll object to answering that. You want
12 to ask him that question?

13 MR. ROBINSON: Yes, Your Honor.

14 THE COURT: Go ahead.

15 Q BY MR. ROBINSON: All right, Mr. Rivers, have you
16 ever been convicted of a felony?

17 A No.

18 Q And had you ever been previously arrested on a drug
19 charge prior to this time?

20 MR. THOMAS: Objection. I think that's immaterial.

21 MR. ROBINSON: Your Honor, I'm satisfied, I don't --

22 THE COURT: You didn't want to pursue the matter, then?

23 MR. ROBINSON: No, sir.

24 THE COURT: Tell the jury to come back --

25 MR. ROBINSON: Just a minute. May I further inquire of

1 this witness out of the presence of the jury in regard to --

2 THE COURT: Yes, go ahead.

3 MR. ROBINSON: All right.

4 THE COURT: If there's any other problems that are going
5 to come up, let's get them resolved.

6

7 VOIR DIRE EXAMINATION

8 BY MR. ROBINSON:

9 Q Mr. Rivers, were there any drugs used by you,
10 Carol Spaulding or Thomas Creech during the time that you picked
11 them up at the truck stop until you were stopped at
12 Glenns Ferry?

13 A Absolutely not, no.

14 Q Did you see any of the individuals, not yourself,
15 use any?

16 A I don't understand the way you phrased that.

17 Q Did you see Carol Spaulding or Tom Creech use any
18 drugs?

19 A No.

20 Q Did you have any knowledge as to whether they had
21 any with them or not?

22 A No, I did not.

23 Q And to your knowledge did they have access to the
24 other drugs that were found in that vehicle?

25 THE WITNESS: Again, Your Honor, I'm not sure if that

1 question could incriminate me and I decline to answer.

2 THE COURT: Yes.

3 THE WITNESS: I refuse to answer.

4 MR. ROBINSON: As the explanation, Your Honor, of course
5 the law enforcement officers that did investigate and find
6 drugs would be testifying that these were there.

7 MR. THOMAS: I would object to putting this in the record.
8 How does Mr. Robinson know what's going to be testified to.

9 MR. ROBINSON: Because they are in the official reports,
10 police reports, Your Honor.

11 MR. THOMAS: Those reports aren't material to the issues
12 of this case.

13 THE COURT: Well, I'll determine that, Mr. Thomas.

14 MR. ROBINSON: If it please the Court, in our Motion for
15 Suppression that was heard last Friday this particular matter
16 was important in regards to the voluntariness --

17 THE COURT: Yes, if that matter comes in through some
18 other witness that doesn't want to exercise the rights under
19 the Fifth Amendment, why, there wouldn't be any problem, I
20 suppose, other than Mr. Thomas objecting on the grounds of
21 materiality. But, that doesn't resolve this problem. I don't
22 -- the only way I know to solve this problem if Mr. Rivers
23 wants to persist in taking the -- exercising his rights under
24 the Fifth Amendment, is to have some -- either show that he
25 wouldn't be incriminating himself as a matter of law or fact or

1 some immunity been granted him.

2 MR. ROBINSON: Then may I establish something further,
3 Your Honor, through the witness?

4 THE COURT: Yes.

5 MR. ROBINSON: Were the charges brought against you in
6 Elmore County dismissed on the 9th of November, or sometime
7 immediately thereafter?

8 THE WITNESS: That would -- is that okay to answer?
9 Would that be incriminating in any way to answer?

10 MR. THOMAS: I was going to raise the materiality
11 objection.

12 THE COURT: If there were charges filed and dropped, I
13 don't think that would incriminate you.

14 THE WITNESS: One charge was filed and dropped shortly
15 after. One charge was filed and dropped several months later.

16 MR. ROBINSON: All right. And this occurred
17 November of 1974?

18 THE WITNESS: Yes.

19 MR. ROBINSON: And you were not tried and you haven't
20 been given the right of a speedy trial in regards to those
21 charges, have you?

22 MR. THOMAS: Objection, that calls for a legal conclusion.

23 THE COURT: Sustained.

24 MR. ROBINSON: Your Honor, based upon the length of time
25 and such and -- I don't find a basis still left for testimony

1 regarding the Fifth Amendment as self-incrimination.

2 THE COURT: Well, we'll take a short recess.

3 (Recess taken.)

4 THE COURT: Back on the record.

5 Let me just ask you a couple of questions,
6 Mr. Rivers.

7 Are you in this state under subpoena and order
8 compelling attendance?

9 THE WITNESS: Yes.

10 THE COURT: Okay. So far as you are aware, have you
11 been granted any immunity by the Prosecuting Attorney of
12 Elmore County from any prosecution for any offense related to --

13 THE WITNESS: No.

14 THE COURT: -- for what might have been in your car or
15 possession?

16 THE WITNESS: No.

17 THE COURT: I will advise you, if it makes any
18 difference to you, Mr. Rivers, that under our Statute, under
19 which a witness is compelled to attend from out of state, you
20 are guaranteed by virtue of that order that you cannot be
21 arrested while you are in this state, or traveling through this
22 state. Now, do you understand what I'm saying?

23 In other words, while you are here under that order
24 to testify you cannot be arrested. You are immune from arrest.

25 THE WITNESS: Um-hmm.

1 THE COURT: This doesn't mean that -- and that means you'd
2 have to be permitted to leave and return to your home in
3 Oregon.

4 THE WITNESS: Portland.

5 THE COURT: Portland, to Oregon. This does not mean that
6 charges couldn't be filed and, possibly some extradition sought,
7 you understand, but you couldn't be arrested during this --

8 THE WITNESS: Um-hmm.

9 THE COURT: -- trip here to just to testify. You'd have
10 to be permitted to return to Oregon under our Statute. Does
11 that help any?

12 THE WITNESS: Well, not really.

13 THE COURT: You still want to exercise your rights?

14 THE WITNESS: Yes.

15 THE COURT: Well, I think that's right, Mr. Robinson.
16 I can't find any exception without him being granted immunity
17 by the Prosecuting Attorney who has jurisdiction of the offense;
18 which would be the Elmore County Prosecutor.

19 MR. ROBINSON: All right, Your Honor.

20 THE COURT: And, as I say, the only -- I've advised him
21 of the only, really -- that he is guaranteed against arrest
22 while he's here under order of the Court to compel attendance
23 as a witness.

24 MR. ROBINSON: Your Honor, the other area of my
25 inquiry of Mr. Rivers does not touch upon this and I'm ready for

1 the jury.

2 THE COURT: All right, tell the jury to come in.

3 (Jury re-entered the courtroom.)

4 THE COURT: Show that the jurors are all present at this
5 time.

6 You may proceed, Mr. Robinson.

7

8 CROSS EXAMINATION (Continued)

9 BY MR. ROBINSON:

10 Q Mr. Rivers, have you, since the 8th day of
11 November, 1974, been in contact or seen either Carol Spaulding or
12 Thomas Eugene Creech?

13 A No.

14 Q You state that you are a doctor in Portland, Oregon?

15 A Yes.

16 Q Would you give us the background of your education
17 as to how much and where?

18 A I received my Bachelor of Arts degree at
19 Bucknell University in Lewisburg, Pennsylvania in May of 1971;
20 subsequently attended the University of Maryland School of
21 Medicine in Baltimore, Maryland and was graduated in May of
22 1975. I began my duties as a house physician at Emanuel
23 Hospital in Portland, Oregon on July the 1st of this year and
24 I'm in the Department of Internal Medicine.

25 Q Still with the hospital?

1 A. Yes.

2 Q Do you also have a private practice?

3 A. No, sir.

4 Q Prior to the 8th day of November, 1974, had you been
5 in contact with Thomas Eugene Creech or Carol Spaulding in
6 Portland?

7 A. No, sir. I had never met them before.

8 Q Never, ever?

9 A. Never.

10 MR. ROBINSON: We have no further questions of this
11 witness, Your Honor.

12

13 REDIRECT EXAMINATION

14 BY MR. THOMAS:

15 Q Mr. Rivers, what period of time were you with
16 Mr. Creech and Miss Spaulding on the evening that they were
17 arrested?

18 A. Okay. Well, as I say, I was not wearing a watch
19 so I wasn't sure of the exact time at which I allowed them to
20 come into my car. I estimate that it was roughly around
21 midnight and we were together up to the point that we were in
22 the Glenns Ferry Police Department. From that point on we were
23 never together again.

24 Q During the time you were with them, was there
25 anything unusual about the behavior of either of them?

1 MR. ROBINSON: Objection, repetitious, Your Honor.

2 THE COURT: Sustained.

3 Q BY MR. THOMAS: Did you have any conversation with
4 either of them?

5 MR. ROBINSON: Repetitious, Your Honor.

6 THE COURT: Yes, I'll sustain the objection. It's
7 improper redirect.

8 MR. THOMAS: May Counsel approach the bench for a moment,
9 Your Honor?

10 THE COURT: Yes.

11 (Unreported conversation between Court and Counsel.)

12 Q BY MR. THOMAS: During the time that you were with
13 the defendant and Miss Spaulding, did you see either one of
14 them take any drugs or intoxicants?

15 A No.

16 MR. THOMAS: No further questions.
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1 RECROSS EXAMINATION

2 BY MR. ROBINSON:

3 Q In that regard, Mr. Rivers, during the entire time
4 that you testified they were with you, it was dark?

5 A Yes.

6 Q And were you concentrating on your driving?

7 A Pretty much, yes.

8 Q And at the point of apprehension, you were
9 concentrating on who was apprehending you?

10 A Right, that's correct.

11 Q Can you testify at all whether they did or did not
12 consume any drugs?

13 A I say that I did not witness it.

14 Q And, by the same token, you can't say whether they
15 did or that they did not?

16 A Well, there was a time that Mr. Creech was not in
17 my presence.

18 MR. ROBINSON: All right. I have no further questions.

19 MR. THOMAS: No further questions, Your Honor.

20 May Mr. Rivers be excused?

21 MR. ROBINSON: Stipulate that he may be excused.

22 THE COURT: Yes, you may leave if you want to.

23 MR. REMAKLUS: Call Lester Kelly.
24
25

1 LESTER L. KELLY,
2 a witness produced on behalf of the State, having been first
3 duly sworn, took the stand and testified as follows:
4

5 DIRECT EXAMINATION

6 BY MR. REMAKLUS:

7 Q State your name, please.

8 A My name is Lester L. Kelly.

9 Q Where do you live, Mr. Kelly?

10 A I live in Cascade.

11 Q Cascade, Idaho?

12 A Yes.

13 Q How long have you lived there, Mr. Kelly?

14 A Steadily since about around May, 1963.

15 Q And what is your occupation?

16 A I'm an "edge man". I work in a sawmill and I work
17 for Boise Cascade Company.

18 Q Do you have any other jobs?

19 A Not -- just out on odd jobs is all. Sometimes I
20 get a little wood for somebody or something like that.

21 Q Well, I mean are you active in any labor relations
22 activities or anything like that?

23 A Yes.

24 Q What is that?

25 A I'm President of a Local Union there. I belong to

1 the School Board, I'm a Board member.

2 Q Now, directing your attention to the early -- very
3 early days in November, 1974, you were living at Cascade; were
4 you not?

5 A Yes, I was.

6 Q And did you have occasion to go to the vicinity of
7 Lewiston, Idaho?

8 A Yes, on Sunday, I think it was the 3rd of November.

9 Q It was on a Sunday, was it, Mr. Kelly?

10 A Yes.

11 Q And why were you going to Lewiston?

12 A I had an old Corvair pickup, an old 1961 that my
13 brother had bought there. My -- I sold to him and his car wasn't
14 in very good shape so we made a deal whereby I would tow the
15 pickup to the top of the Lewiston Hill for him.

16 Q Where does your brother live?

17 A He lives in Spokane.

18 Q So, on this day what were you driving?

19 A I have a 1974 short-bed Dodge pickup.

20 Q Is that what you were driving on that day?

21 A Yes.

22 Q So, you were towing the Corvair, is that right?

23 A That's right.

24 Q And -- handing you what's been admitted into
25 evidence as State's Exhibit 28-A, Mr. Kelly, on the day that

1 you went up to Lewiston, did you have occasion to see that
2 automobile?

3 A. Yes, sir, I did.

4 Q. And, first of all, how do you know it to be that
5 automobile?

6 A. Well, it's an old -- at the time I thought it was
7 about a '55, '56 Buick, what I called an old box-type.

8 Q. Um-hmm. Notice anything else about it?

9 A. Yes, there was. The color, it's bleached, it was
10 what I called an "aqua green" and white.

11 Q. And, handing you what's been admitted into evidence
12 as State's Exhibit 28-G, another view of the same vehicle?

13 A. Yes, it is.

14 Q. Does that look familiar to you?

15 A. Up to the point that -- what is in the window at
16 the time I thought was a blanket, I couldn't tell for sure
17 because I was moving.

18 Q. Um-hmm.

19 A. Later I found out it wasn't a blanket.

20 Q. Okay. Now, could you tell us where you were when
21 you saw the -- this vehicle that's in these pictures on that
22 Sunday?

23 A. It was pretty near the Spaulding Indian Museum.

24 Q. Now, was that -- can you locate it for us?

25 A. It's about 11 or 12 miles through Lewiston to the

1 east. It's on the river. It's on Highway 95. Across the
2 river is the highway up the Clearwater to Orofino.

3 Q So, were you on -- well, anyway, was anyone with
4 you at this point?

5 A Not in the pickup with me. Behind me my brother
6 and his wife were in an old Rambler station wagon.

7 Q Did you see any people around this car in question
8 that you just identified?

9 A Yes, I did. They was a young couple. At the time
10 I thought that they were college kids.

11 Q Could you describe the young couple?

12 A The girl wore a long, dark-colored maxi coat, had
13 long hair, kind of -- at the time I thought it was a dishwater
14 blonde.

15 Q And --

16 A And the guy --

17 Q Mr. Kelly, I'm going to hold up what's been marked
18 -- I think it's marked for identification as State's Exhibit
19 24. Did the coat resemble this coat?

20 A It kind of -- I mean -- I didn't think it was
21 quite that dark, but it was dark colored.

22 Q It was long?

23 A And it was a long maxi coat.

24 Q And can you describe the other person?

25 A It was a male, fairly young. I couldn't guess the

1 age but I figured somewhere between 20 and, maybe, 25. It's
2 hard to tell when you are moving.

3 Q And do you remember how he was dressed?

4 A The main thing I remember was he had a jacket, kind
5 of like -- well, like a pea coat, I call it.

6 Q And could you describe the color?

7 A Dark.

8 Q Now, do you have any idea of the time of day that
9 was?

10 A Just a rough guess. I'd say about 4:00 in the
11 afternoon, that vicinity.

12 Q Now, did you have occasion to see that vehicle
13 again that day?

14 A Yes. I'm pretty sure it was the vehicle I seen
15 there that pulled off the road that night when I was returning.
16 I seen it down the canyon, I think it was around Slate Creek,
17 in that area. I passed it and another vehicle that night.

18 Q Okay. Now, so we can kind of pick up this time
19 sequence, after you saw the vehicle the first time did you
20 continue on towards Lewiston?

21 A Yes. I went to Lewiston, my brother gassed me up,
22 I went to the top of the hill, across the Washington State line,
23 unhooked the pickup and we hooked them up real fast and I
24 turned around and came back to the top of the hill where I
25 called the Valley County Hospital. My wife was in the hospital

1 at the time.

2 Q And you called from the cafe there at the hilltop?

3 A At the top.

4 Q Then what did you do, Mr. Kelly?

5 A Then I went up the river, around by way of Kamiah,
6 stopped and visited for a few minutes, had some coffee and
7 cake with my son's in-laws.

8 Q And then where did you go?

9 A Then I went on around through Kooskia and up to
10 Grangeville and dropped over the Whitebird Hill.

11 Q Did you get back on Highway 95 then?

12 A Yes, at Grangeville.

13 Q Um-hmm. And then tell us about where you think you
14 were when you -- which direction were you headed when you say --

15 A I was headed south.

16 Q That would be up river?

17 A Yes.

18 Q Up --

19 A Yes, that would be up river.

20 Q Now, about where was the car when you saw it the
21 second time?

22 A I'm pretty sure it was along in -- right in the
23 vicinity of Slate Creek because the one thing I do remember was
24 it and a pickup were fairly close together. I waited a couple
25 minutes to make sure that there was no lights coming towards me

1 and then I barreled around it.

2 Q You were headed home to go to work; were you not?

3 A I was traveling at a pretty high rate of speed.

4 Q Now, did you have occasion to see this car ever
5 again?

6 A Yes, sir.

7 Q And can you tell me when and where that was?

8 A I think that was on the 5th. It was on election
9 day and it was down the canyon below Cougar Mountain Lodge.

10 Q And do you know what highway that is?

11 A Yes, that's Highway 55.

12 Q And do you remember -- how did you remember it was
13 the same vehicle?

14 A At the time I thought it was kind of odd to see the
15 same old car, you know, three different times. It kind of
16 sticks out, that particular type --

17 Q Now --

18 A -- the color and everything.

19 Q --- let's turn to the first time you saw the car up,
20 you know, near Lewiston by the mission there. Did you see
21 whether or not the young couple you described, whether or not
22 they got into the vehicle?

23 A No, I never actually seen them get into it. I just
24 -- the vehicle, I thought, was pulling off the road right at
25 their vicinity and I looked in the rear view mirror and I never

1 actually seen them get into it.

2 Q Did you see them approach the Buick?

3 A It looked like they was.

4 Q Um-hmm. Now, going to the second time that you saw
5 the vehicle down there on Slate Creek, did you have an
6 opportunity to observe the occupants of it?

7 A No, it was dark.

8 Q Then, after you saw it down there below Cougar
9 Mountain Lodge for the third time, did you ever see it again?

10 A Yes, Sheriff Lynskey took me to the county seat in
11 Cascade and asked me if that was the vehicle I had seen and I
12 told him yes.

13 Q Now, Mr. Kelly, did you ever have occasion to go to
14 the Sheriff's office, or talk to any of the Sheriff's personnel
15 and give them the description of these two young people you
16 saw up by Lewiston?

17 A Yes, sir, I did.

18 Q And approached you to do that?

19 A Well, first I think it was the 5th or 6th, I can't
20 remember. It was the second -- I think the day after I came
21 back from the doctor, there was conversation going around the
22 mill about a car being towed in and some bodies being found up
23 at Donnelly.

24 I asked one of the guys at the mill right at -- if
25 it was an old two-tone '55 Buick or '56. I wasn't sure of the

1 date. Then it went along that day and I think it was that night,
2 I'm not sure, or the next night I got to thinking about it and
3 I wondered, you know, if it was -- it's a coincidence you see
4 people up there and the car there and the car again and the car
5 down the canyon. So, I asked a couple guys on the street if it
6 was and they wasn't sure. They said "It's over in the garage,
7 why don't you look at it."

8 I told them I wasn't going anywhere near it and I
9 went back home.

10 I thought about it for awhile and finally I called
11 Bill Ford, who is the Deputy with -- and a dispatcher with the
12 Sheriff's office and we're fairly good friends. So, I started
13 talking to Bill and I told him about this couple I seen and the
14 car and he got pretty excited and then he had me describe what
15 they were wearing and everything and I told him. Then, if I
16 remember right, he asked me if I cared if someone came and talked
17 to me. I told him no.

18 So, then, a few minutes later, I think ten, maybe
19 15 minutes, I think it was Jim Maxwell, Bud Rowe and another
20 Deputy and I think another guy that was with the State, if I
21 remember right, I'm not quite sure.

22 Q Did they come?

23 A There was four of them and then one left and I think
24 three stayed, I think.

25 Q And where was this?

1 A This was at my home.

2 Q Um-hmm. And then what happened, if anything,
3 Mr. Kelly?

4 A I think it was Jim Maxwell, he asked me to, you
5 know, to describe them and stuff. So, I told him what had
6 taken place and everything.

7 Q And Jim Maxwell, is he a Valley County Deputy
8 Sheriff?

9 A Yes, he is.

10 Q Did you give him essentially the same description
11 as you have given here in court?

12 A Yes, I did.

13 Q And then what, if anything, did you do with
14 reference to this event? You said you went and looked at the
15 car finally?

16 A Well, that was some time later.

17 Q When was that?

18 A I can't remember the exact date. It was awhile
19 after that.

20 Q And where was the vehicle?

21 A It was in the County building down there at the
22 shop area in Cascade.

23 Q And who went with you, if anyone, to view the
24 vehicle?

25 A Sheriff Lynskey.

1 Q And the vehicle that you looked at, did you determine
2 that that was the same vehicle that you had seen on the highway
3 as we have been discussing it?

4 A Yes, I'm pretty sure it is.

5 MR. REMAKLUS: You may examine.

6 MR. ROBINSON: Thank you.

7

8 CROSS EXAMINATION

9 BY MR. ROBINSON:

10 Q Mr. Kelly, as I understand it, you started out on
11 Sunday, the 3rd of November, 1974 from your home in Cascade?

12 A Yes.

13 Q Towing a Corvair?

14 A That's right.

15 Q And you were driving what kind of a vehicle?

16 A A '74 Dodge pickup, a short-bed.

17 Q All right. And this was on a tow bar?

18 A Yeah, I guess that's what you call it.

19 Q All right. And what time of the day was it you left
20 Cascade?

21 A Approximately twelve, noon.

22 Q All right. And your destination that day was where,
23 the top of the Lewiston Hill?

24 A Yes. I wanted to get it up so my brother -- he had
25 a bad transmission, he didn't stand a chance of towing it up the

1 hill.

2 Q Now, the cafe at the top of Lewiston Hill, is that
3 where you were going to make the changeover?

4 A No, I wanted to get past that and up on the flat
5 where I could get a fairly level spot to unhook so it wouldn't
6 roll.

7 Q How far above the top of Lewiston Hill did you go?

8 A I think it's, probably, maybe a couple of miles
9 around there.

10 Q Past the junction of the --

11 A Yes, just past.

12 Q -- Highway 95?

13 A Yes.

14 Q All right. So, then, it was on that trip going up
15 to that destination is when you first saw this vehicle?

16 A I'm pretty sure it is.

17 Q All right. And you saw this vehicle pull off to the
18 side to pick up some hitchhikers?

19 A Well, I took it that they were hitchhiking and I
20 took it that this was the same vehicle that I seen pull off
21 there.

22 Q All right. Were you headed in a northerly direction?
23 Generally?

24 A That's right.

25 Q And this other vehicle was headed in a southerly

1 direction?

2 A Yes.

3 Q And the exact location you say was the Spaulding
4 Museum?

5 A It was across the road and just a little ways up
6 from it.

7 Q What do you mean "up from it"? Towards Cascade or --

8 A When you are coming down that road that would be up
9 because you are headed towards the prairie. It would be south.

10 Q Towards Cascade, or towards Lewiston from the
11 Spaulding Museum?

12 A Towards Grangeville and Cascade.

13 Q All right. Is it a wide spot in the road?

14 A Not really. There's really not much room to pull
15 off there.

16 Q Now, that Spaulding Museum is just down off the side
17 of the road with signs telling the traveling motorist that it
18 is there, just before you break out onto the Clearwater River
19 and go across that bridge; is that correct?

20 A Yes, it is -- well, there's a big curve there where
21 you go across the river and it sits down over the bank.
22 There's a place you can drive down there.

23 Q Is that a two, three or four-lane highway?

24 A That's a two-lane highway.

25 Q Improved, wide highway?

1 A. Yes.

2 Q. And you were traveling approximately what speed?

3 A. I'd say somewhere in the neighborhood of probably 35

4 or 40 miles an hour. I had slowed down quite a bit. I was

5 trying to let my brother catch up with me.

6 Q. And your brother and his wife were following you in

7 a Rambler vehicle?

8 A. Yes, a station wagon, an old station wagon.

9 Q. How old?

10 A. I think it's a '68 or '69. I'm not sure, he's had

11 two or three of them.

12 Q. Are you a car buff of any kind?

13 A. Not exactly.

14 Q. But, it -- was there something about this vehicle

15 that drew your attention?

16 A. Not at that particular time. I just noticed it was

17 an old box-type Buick, what I call a "box-type". I figure about

18 a '55 or '56.

19 Q. And you placed the time of day approximately

20 4:00 p.m.?

21 A. Roughly.

22 Q. All right. How many occupants were in that Buick?

23 A. All I could tell was two.

24 Q. At least that's all you saw?

25 A. Yeah, I couldn't see very well, it's shadows and

1 sun was from the West.

2 Q Tinted windshield?

3 A I can't remember.

4 Q And would you describe again the two people who
5 were standing by the road in relationship to the clothing,
6 articles of clothing that you remember?

7 A They were young, like I said, I thought they were
8 college kids. The girl, from her, I figured in the neighborhood
9 of maybe 18, maybe 19. It's hard to tell a girl's age these
10 days.

11 Q Um-hmm.

12 A And the guy, I figured a young guy, probably between
13 20 and 25.

14 Q Do you recall whether or not the young person,
15 male gender that you describe as 20, 25, wore a moustache,
16 sideburns, beard, goatee?

17 A I think he had a little bit of chin whiskers, what
18 I call "chin whiskers", little beard, dele-bob on the chin
19 here (indicating).

20 Q All right, now --

21 A His hair was about yea long (indicating).

22 Q When you say "yea long" and you point to the tip
23 of your shoulder --

24 A It wasn't real long, like some of them wear it, but
25 it was fairly long.

1 Q You pointed to your shoulder, didn't you?

2 A I'd say just about right in here (indicating).

3 Q And in this passing glance that you had of these

4 persons, were you close enough to -- for any description as to

5 complexion, anything of this nature?

6 A The girl is the one I really -- I mean, I really

7 noticed she had the real long hair and the maxi coat. It kind of

8 stood out.

9 Q All right. Now, this is a point, as you describe,

10 about 11 miles east and south of Lewiston?

11 A Roughly.

12 Q Roughly? And it occurred about 4:00 p.m. on

13 Sunday?

14 A Approximately.

15 Q And from there you -- did you stop in Lewiston on

16 your way up?

17 A Just to get gas.

18 Q Where? Across the bridge or before you went across

19 the bridge?

20 A No, we didn't go into Lewiston. Just before you get

21 to Lewiston there's -- you make a right-hand turn there, it's

22 four lanes there. You turn off from that and 95 goes on around

23 the hill and starts up the Lewiston Hill.

24 Q Which one of those stations did you stop at? The

25 Texaco, Shell or Conoco?

1 A. I think it's a 66, it's the first one after you
2 make the turn.
3 Q. Off the left side? Off the left side of the road?
4 A. Yes.
5 Q. All right. And how long were you there?
6 A. Just a few minutes, just long enough to finish
7 filling my pickup up.
8 Q. And then you traversed up the Lewiston Hill?
9 A. Yes. I left my brother there to pay for the gas
10 and I went on to the top of the hill. I thought he'd catch me.
11 Q. And when you disconnected the Corvair, you -- did
12 you assist him in connecting the Corvair up to his Rambler?
13 A. Yes.
14 Q. Approximately how long did all that take?
15 A. Not more than three or four minutes. We were -- was
16 both anxious, he was wanting to go on and I was in a hurry to
17 go back.
18 Q. Now, you say the reason that you towed the Corvair
19 was because he had clutch trouble?
20 A. Yes.
21 Q. And when you left this position roughly just across
22 the Washington line and started your return trip, did you stop
23 anywhere prior to getting back on the Spaulding Museum, stop
24 in Lewiston or any --
25 A. No, no -- oh, I stopped and made a phone call when

1 I left my brother, at the top of the hill. I called the
2 Valley County Hospital and I had told my wife that I would call
3 and tell her when I was started back. I called the Hospital,
4 told them that I was on my way and for her not to worry. I
5 asked the operator what time it was.

6 Q All right. Then you, apparently, had some other
7 business you wanted to conduct by going to Kamiah and in that
8 area?

9 A Yes. I stopped and visited my son's in-laws.

10 Q And where is that?

11 A In Kamiah.

12 Q Where is Kamiah?

13 A It's about three miles out of Kamiah.

14 Q All right. Approximately what time did you arrive
15 there?

16 A I don't really know for sure. I figure it was
17 around 8:00, 8:30, somewhere in there.

18 Q And dark?

19 A Yes, it was night.

20 Q All right. And then coming -- how long did you
21 stay there?

22 A Not very long. I figured maybe a half hour. It
23 was just a guess.

24 Q All right.

25 A I really don't know. I know I didn't stay too long.

1 Q Then did you climb the hill out of Kamiah to come
2 back up to the Grangeville area?

3 A No, I went on up the river through Kooskia and right
4 on up the Clearwater until you hit the grade that comes up to
5 Grangeville.

6 Q That's a switchback grade?

7 A Not really. It's pretty crooked, but it's not really
8 a switchback. I don't think I'd call it a "switchback".

9 Q Okay. And did you join onto U.S. 95?

10 A At Grangeville.

11 Q At Grangeville?

12 A Yes.

13 Q Did you stop in Grangeville at all?

14 A No.

15 Q Had you eaten a meal at your son's in-laws?

16 A I had some cake and coffee.

17 Q Did you stop for any kind of a meal in going on your
18 return trip back to Cascade?

19 A No.

20 Q Stop for coffee anywhere?

21 A Not that I remember. I was in a hurry.

22 Q All right. Now, when you got back onto U.S. 95 at
23 Grangeville, you used U.S. 95 all the way back into Cascade?

24 A No, into New Meadows and then you hit 55 there.

25 Q All right. But, that's the route that you did

1 travel?

2 A That's right.

3 Q Now, this second time you saw this vehicle was in
4 the canyon near Slate Creek?

5 A That's -- I am pretty sure that's where I seen it.
6 I wasn't really sure. At first I thought about it quite a bit,
7 I knew I had seen it that night and had passed it and it -- and
8 an old pickup and I'm pretty sure that's where it was, was
9 along in the Slate Creek vicinity; somewhere in there.

10 Q All right. Now, some of these people in Shoshone
11 County may not be all familiar with where Slate Creek is on
12 U.S. 95. That's below Whitebird?

13 A Yes, it is.

14 Q Now, Whitebird at that time was still the switchback?

15 A That's right.

16 Q You didn't have access to the new road?

17 A No.

18 Q And it took you longer to go down Whitebird?

19 A It takes a little longer.

20 Q All right. Now, where and how far south of
21 Whitebird is Slate Creek? Approximately?

22 A Below Whitebird?

23 Q Or is it above Whitebird?

24 A Well, it depends on which you look at it. It's
25 up the river from Whitebird. It's -- I think it's somewhere

1 around nine miles. I'm not -- I can't remember for sure.

2 Q North or south of the town of Whitebird?

3 A South.

4 Q So that's below Whitebird Hill?

5 A That's right.

6 Q How far south of the town of Whitebird is Slate
7 Creek?

8 MR. REMAKLUS: He just testified he thought it was nine
9 miles.

10 THE WITNESS: I think it's about nine, but I'm not quite
11 sure. I know it doesn't take too long to go there from
12 Whitebird.

13 Q BY MR. ROBINSON: All right. Do you recall
14 approximately the hour of the evening it was when you saw, or
15 thought you saw, this vehicle the second time?

16 A Just a guess. I would say around 10:00, that's what
17 I told Mr. Remaklus at one time. He questioned that at that
18 time.

19 Q All right.. Now, is Slate Creek area there located
20 on straight road or on a curve?

21 A Well, the whole area in through there has been
22 rebuilt. It's nice wide highway. There is some curves in it,
23 some of them more so than others.

24 Q All right. When --

25 A Right at Slate Creek it makes a long one, gradual.

1 Q All right. Now, when you observed these two
2 vehicles, one you believed to be the '56 Buick in question here,
3 were they off at a wide spot in the road?

4 A Off from it.

5 Q Were they off of the paved portion of the road?

6 A No, they were moving.

7 Q They were moving? And which was in the lead?
8 The pickup or the Buick?

9 A I think the Buick was if I remember right. The
10 old pickup was in the back.

11 Q Did these vehicles appear to be traveling together?

12 A I don't know. I have no way of knowing.

13 Q What color was the pickup?

14 A I think it was an old Ford pickup if I remember
15 right.

16 Q All right.

17 A I'm not quite sure about the color.

18 Q You recall about that same time seeing a Dodge
19 Road Runner?

20 A No, I don't. I passed several vehicles that night
21 but I don't remember anything of that kind.

22 Q And when you passed the pickup and the Buick, were
23 your headlights such it illuminated the Buick so you could tell
24 how many passengers were in it?

25 A No.

1 Q How many do you recall you saw?

2 A I don't know.

3 Q Just moving?

4 A I just glanced at it. I was moving at a very
5 high rate of speed.

6 Q By "high rate" meaning what?

7 A Well, about, probably at that time in that stretch
8 of road right there where it's good, I'd guess probably 85,
9 maybe more.

10 Q All right. Anything else at that time you recall
11 unusual about the vehicles in any way, shape or form?

12 A Not that I can recall.

13 Q Then, the next time you saw the vehicle was south
14 on State 55 south of Cascade and actually south, down the canyon
15 from Cougar Mountain Lodge?

16 A Right.

17 Q And how far south of Cougar Mountain Lodge was that,
18 approximately?

19 A My guess is three or four miles. But, I suggested
20 at one time I seen it further than that. I remember seeing it
21 and I was told that I couldn't possibly have seen it that far
22 south. But, I remember seeing the old pickup -- or, I mean the
23 old Buick there pulled off the road. The same one that I was
24 shown later and same one I seen before.

25 Q All right. And how far -- you know where it was

1 actually found, don't you?

2 A. Not actually. I know where I've been told it was
3 found.

4 Q. And your recollection is that the vehicle was
5 further south on State 55 than that?

6 A. I thought it was.

7 Q. How much further?

8 A. Quite a distance. I couldn't say exactly how many
9 miles, though.

10 Q. Fifteen miles?

11 A. No, I don't think that far.

12 Q. Less than ten?

13 A. Less than ten.

14 Q. As much as five?

15 A. Possibly.

16 Q. All right. And how long have you lived in the
17 Cascade area?

18 A. Since 1963.

19 Q. You traversed the road between Cascade and Boise
20 quite often?

21 A. Quite often.

22 Q. You feel that you are very familiar with this
23 stretch of road?

24 A. Yes, I do.

25 Q. How often do you travel it?

1 A It varies. Sometimes a couple times a month,
2 sometimes I go down once a week. It depends on what I have to go
3 down for.

4 Q All right. Other than what you've told us,
5 Mr. Kelly, do you recall any other individuals in about or
6 around that vehicle on any of the three occasions; other than
7 what you've testified to?

8 A No, sir, I don't.

9 Q Did you at any time have occasion, or reason, to
10 even take a license number?

11 A The only thing I remember about it was that it had
12 out-of-state plates.

13 Q Did you in particular remember ever seeing a piece
14 of plywood substituting for glass in one of the window areas?

15 A When I found that out was when Sheriff Lynskey took
16 me to the shop. Like I said, when I seen it before I thought
17 it was a old blanket or piece of cloth. I never really paid
18 that much attention to it. That was when I found out that it
19 had plywood in it.

20 Q Have you ever had conversations with anyone that
21 indicated that there were five or more people in that vehicle?

22 A I can't recall whether or not on that.

23 MR. ROBINSON: I have no further questions, Your Honor.

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REDIRECT EXAMINATION

BY MR. REMAKLUS:

Q The window of the car was obscured with something when you saw it before, the first time?

A Yes, I remember that.

Q You remember that?

A Um-hmm.

MR. REMAKLUS: I have no further questions and I'd like to know if Mr. Kelly might be excused, Your Honor.

MR. ROBINSON: May we have just a second here, Your Honor?

THE COURT: Yes.

(Brief delay.)

THE COURT: Mr. Remaklus would like Mr. Kelly to be excused. Did you have any objection?

MR. ROBINSON: No objection, Your Honor.

THE COURT: You may be excused if you want to leave, then.

We will take our evening recess at this time.

I recognize tomorrow is Saturday but, if no one has any objections I guess we'll go tomorrow. That's better than just sitting around a motel.

We will take our recess until 9:30 in the morning, then, if you will remember the admonition, don't discuss the case and keep your minds open and follow the direction of the Bailiffs that are in charge of you. (Recess taken.)